

1	EXHIBIT INDEX (continued)		
2	MARKED ADMITTED		
3	29. Testimony of Chandler Davidson, Tsanoff Professor of Public Affairs Emeritus, Rice University, regarding "The Historical Context of Senate Bill 362," March 10, 2009		
4		521	521
5	30. 3/06 Printout from Texas AG Website entitled "Helping Stamp Out Voter Fraud in Texas," by Greg Abbott, Attorney General of Texas, submitted by Sen. Shapleigh		
6		550	550
7	31. Dashwood case documents submitted by Ed Johnson, Harris County Tax Assessor-Collector and Voter Registrar's Office		
8		559	559
9	32. Records from specific Harris County voting documents, submitted by Ed Johnson		
10		559	559
11	33. Harris County Deceased Voting History, miscellaneous registration applications, submitted by Ed Johnson		
12		559	559
13	34. Texas Voter Registration Application form submitted by Sen. Huffman		
14		570	570
15	35. Testimony of Daniel B. Kohrman, Senior Attorney, AARP Foundation, re SB 362 March 10, 2009		
16		621	621
17	36. Photographs of Voter Education, Anderson County Workshop, 2008		
18		724	724
19	37. Testimony of Gary L. Bledsoe, President, Texas NAACP, re SB 362, March 10, 2009		
20		724	724
21			
22			
23			
24			
25			

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1	EXHIBIT INDEX (continued)		
2		MARKED	ADMITTED
3	38. Number of voters who have		
4	registered since 2006 without		
5	a driver's license number,		
6	submitted by Sen. Watson	767	767
7	39. The Special Investigations		
8	Unit Role and Investigative		
9	Efforts and Funding,		
10	submitted by Sen. Huffman	767	767
11	40. Slip Opinion, U.S. Supreme		
12	Court, <u>Crawford vs. Marion</u>		
13	<u>County Election Board,</u>		
14	October Term, 2007	768	768
15	41. U.S. Supreme Court, <u>Crawford</u>		
16	<u>vs. Marion County Election</u>		
17	<u>Board, on Writ of Certiorari</u>		
18	to U.S. Court of Appeals for		
19	the Seventh Circuit, Brief of		
20	Texas, Alabama, Colorado,		
21	Florida, Hawaii, Michigan,		
22	Nebraska, Puerto Rico and		
23	South Dakota, as <i>Amici Curiae</i>		
24	Supporting Respondents	768	768
25	42. Written Testimony of Claire		
26	Oxley Gluck from Boerne, in		
27	Kendall County, re SB 362	773	773
28	43. Written Testimony of Hazel		
29	Cotton of Texarkana, Texas		
30	re SB 362	775	775
31	44. Written Testimony of Kathy		
32	Hicks of Texarkana, Texas		
33	re SB 362	779	779
34	45. Written Testimony of Donald		
35	Giles of Texarkana, Texas		
36	re SB 362	783	783
37	46. Written Testimony of Anita		
38	Privett, League of Women		
39	Voters of Texas, re SB 362	789	789

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1	EXHIBIT INDEX (continued)		
2	MARKED ADMITTED		
3	47. Written Testimony of Rosa Rosales, League of United Latin American Citizens, National President re SB 362		
4		794	794
5	48. Written Testimony of Dustin Rynders, Advocacy, Inc., re SB 362		
6		800	800
7	49. Written Testimony of Marsha Correia re SB 362		
8		804	804
9	50. Written Testimony of Rachel A. Hernandez re SB 362		
10		817	817
11	51. 10/17/08 Article by Nelda Wells Spears, Voter Registrar, Travis County, entitled "40,000 Voter Registration Applications Processed in Time For Early Voting"		
12		825	825
13		825	825
14	52. Written Testimony of Lydia Camarillo, SVREP Vice President, re SB 362		
15		826	826
16	53. Written Testimony of Luis Figueroa, Mexican American Legal Defense and Education Fund (MALDEF), re SB 362		
17		841	841
18	54. Written Testimony of Sylvia Mendoza re SB 362		
19		848	848
20	55. Written Testimony of Dr. Rod Fluker, Sr., Executive Director for Texas Association of Black Personnel in Higher Education, re SB 362		
21		861	861
22		861	861
23			
24			
25			

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P R O C E E D I N G S

TUESDAY, MAY 10, 2009

(5:50 p.m.)

INVITED TESTIMONY

TESTIMONY BY HANS VON SPAKOVSKY

MR. von SPAKOVSKY: Thank you,  
Mr. Chairman, senators. I appreciate the invitation  
to testify here today. My name is Hans von Spakovsky.  
I'm a legal scholar at the Heritage Foundation,  
although the opinions here today are my own.

Just by background, I've got extensive  
experience in voting and election issues. I spent  
four years at the Department of Justice as a voting  
counsel. I spent two years on the Federal Election  
Commission. I also spent five years as a member of a  
county election board in Atlanta, Georgia, in Fulton  
County, which is the largest county in the state, and  
it's a county that's about half African-American.

Guaranteeing the integrity of elections  
requires having security throughout the entire  
election process, from the voter registration to  
voting in the polls on Election Day to counting the  
ballots. I doubt any of you here would think it would  
be a good idea to give worldwide Internet access to  
the computers that are in a county election department

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1       that tabulate the vote.

2               Requiring someone to authenticate their  
3       identity in the polling place is part and parcel of  
4       the same kind of security. Every illegal vote steals  
5       a vote from a legitimate voter. And voter ID doesn't  
6       just prevent impersonation fraud at the polls, it also  
7       can prevent people from voting under fictitious voter  
8       registrations and also double voting by individuals  
9       who are registered in more than one state.

10              Voter fraud does exist, and criminal  
11       penalties imposed after the fact are not sufficient to  
12       protect against it. That claim was, in fact, raised  
13       in the Indiana case, and the Supreme Court said that  
14       despite such criminal penalties, there are flagrant  
15       examples of such fraud that have been documented  
16       throughout this nation's history by respected  
17       historians and journalists. They not only demonstrate  
18       the risk of voter fraud is real, but it could affect  
19       the outcome of a close election.

20              You've had some questions about why have  
21       there not been more prosecutions of voter  
22       impersonation. Well, as the Seventh circuit said in  
23       the Indiana case, it's hard to prosecute something  
24       when you don't have the tool to detect it, voter ID.

25              However, if you want a good example of

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1     this, I wrote a paper last year for the Heritage  
2     Foundation that detailed a publicly released state  
3     grand jury report in New York City, 1984, which  
4     detailed a successful and undetected 14-year  
5     conspiracy in which impersonation fraud was carried on  
6     at the poll and thousands of fraudulent ballots were  
7     cast in not just state legislative primary elections  
8     but also in congressional elections.

9             Crews of from five to eight people were  
10    recruited and sent from polling place to polling place  
11    where they voted in the names of legitimate voters,  
12    people who were dead but still on the registration  
13    lists, individuals who had moved and also under the  
14    names of fictitious voter registration names that had  
15    been successfully registered.

16            According to the grand jury, the advent  
17    of mail-in registration was a key factor in this  
18    fraud. It could have been easily stopped if New York  
19    had had voter ID. In recent elections, as you know,  
20    thousands of fraudulent voter registration forms were  
21    detected by election officials. But given the minimal  
22    screening efforts in many election jurisdictions,  
23    there is no way to know how many others slipped  
24    through. In states with ID, election officials --  
25    without ID, election officials have no way to prevent

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1 bogus votes from being cast.

2 The problem of double voting -- well,  
3 I'll give you an example of that. In the Indiana  
4 Supreme Court case, the League of Women Voters filed  
5 an amicus brief against the law. And in it they  
6 illustrated an Indiana voter, an elderly woman who  
7 they said had had problems voting. The local paper  
8 went and interviewed her.

9 The reason she had had problems voting,  
10 she tried to use a Florida driver's license when she  
11 went to her polling place in Indiana. Not only did  
12 she have a Florida driver's license, she was  
13 registered to vote in Florida. In fact, she owned a  
14 home in Florida and had claimed a homestead exemption  
15 which, as you know, you can only do if you are a  
16 resident of the state. So the law actually worked to  
17 prevent someone who could have voted twice without  
18 detection.

19 I don't mean to single out Texas. But  
20 just like Indiana, New York and Illinois, Texas has a  
21 long and unfortunate history of voter fraud. In the  
22 late 1800's, for example, Harrison County was so  
23 infamous that the phrase "Harrison County methods"  
24 became synonymous with election fraud. Box 13 has  
25 already been mentioned. The point is that there are

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1 individuals who are willing to break the law to try to  
2 steal an election.

3 I don't claim that there is massive  
4 voter fraud in Texas or elsewhere. In fact, I'm a  
5 former election official, and I think most of our  
6 elections are run pretty well. But the potential for  
7 abuse exists, and there are many close elections that  
8 could turn on just a handful of votes. And there are  
9 enough incidents of voter fraud to make it very clear  
10 we should take steps to stop that.

11 Now, the biggest thing I've heard today  
12 is that voter ID will suppress the votes of voters,  
13 particularly the poor or the elderly. That is untrue.  
14 Social science research shows that that's not the  
15 case. And the actual election results in the two  
16 states with the strictest voter ID in the country show  
17 that is not true.

18 The Heritage Foundation released a study  
19 in September 2007 that looked at voter turnout in  
20 every state in the country in the 2004 election,  
21 comparing those states who had voter ID to those  
22 states who do not. They found that voter ID laws do  
23 not reduce the turnout of voters, including African-  
24 Americans and Hispanics, that those voters were just  
25 as likely to vote in states with ID as in states where

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1 just their name was asked.

2 A study by professors at the University  
3 of Delaware and Nebraska-Lincoln examined data from  
4 the 2000, 2002, 2004 and 2006 elections. The study  
5 found that voter ID laws do not affect turnout,  
6 including across racial lines, ethnic lines and  
7 socioeconomic lines. The study concluded -- and I'll  
8 give you their quote -- the "concerns about voter ID  
9 laws affecting turnout are much ado about nothing."

10 A professor at MIT, as part of the  
11 CalTech Voting Project, did a survey of 36,000  
12 individuals to see what their Election Day experience  
13 was like. Overwhelming support for voter ID. Only 23  
14 individuals who had a problem voting because of voter  
15 ID. And there was no indication in the survey if they  
16 were actually eligible voters.

17 A lot of talk has been here about  
18 election results in Georgia and Indiana. In Georgia,  
19 there was record turnout in the 2008 presidential  
20 primary after the voter ID law went into effect, a  
21 million more voters than in 2004, when there was no  
22 voter ID law in effect.

23 The number of African-Americans voting  
24 in the 2008 presidential primary doubled from 2004  
25 when there was no voter ID law in effect. In fact,

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1       there were 100,000 more votes in the Democratic  
2       Primary in Georgia than in the Republican Primary.  
3       The general election in Georgia, one of the strictest  
4       voter ID laws in the country, largest turnout in its  
5       history. Democratic turnout was up 6.1 percentage  
6       points from the 2004 election when there was no voter  
7       ID. Overall turnout in Georgia was 6.7 percentage  
8       points higher than in 2004, the second highest  
9       increase of any state in the country.

10               The Georgia law has been upheld in every  
11       federal and state court. And, in fact, the Georgia  
12       judge, who is a former Democratic legislator appointed  
13       by Jimmy Carter, pointed out that in two years of  
14       litigation, none of the organizations who sued,  
15       including the NAACP, could come up with a single  
16       witness, a single individual who could not vote  
17       because of the voter ID requirement.

18               In Indiana, Democratic presidential  
19       preference primary last year, Democratic turnout  
20       quadrupled from the 2004 election. In fact, it was up  
21       8.32 percentage points from 2004, the largest increase  
22       in Democratic turnout of any state in the country.  
23       And the Supreme Court said, "Indiana has the strictest  
24       voter ID law in the country."

25               We are only one of about 100 democracies

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1 that do not require photo ID. Our southern neighbor,  
2 Mexico, which has a much larger population in poverty,  
3 requires both a photo ID and a thumb print when people  
4 go to vote. Since they put that provision in, in the  
5 mid-1990s, turnout has increased in their elections.

6 Requiring voters to authenticate their  
7 identity is a perfectly reasonable and easily met  
8 requirement. It's supported by the vast majority of  
9 voters. All the polling data shows that. And it  
10 protects the integrity and reliability of the  
11 electoral process, as the Supreme Court said, and it  
12 also maintains the confidence of individuals in the  
13 security of their elections.

14 And I'm done, Mr. Chairman.

15 SEN. DUNCAN: Thank you, Mr. von  
16 Spakovsky. Before I entertain any questions, you have  
17 written testimony. Do you wish to submit that into  
18 the record?

19 MR. von SPAKOVSKY: I would like to  
20 submit it. I believe I gave it to the Clerk, Mr.  
21 Chairman.

22 (Exhibit No. 14 marked and admitted)

23 SEN. DUNCAN: Okay. We have it marked  
24 as Exhibit 14.

25 Members, are there any questions for

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1 Mr. Von Spakovsky?

2 Sen West.

3 SEN. WEST: Will we be asking questions  
4 from the chair or standing up?

5 SEN. DUNCAN: Standing up.

6 **QUESTIONS FROM SENATE FLOOR**

7 SEN. WEST: Okay. Sir, let's talk about  
8 your background. We've met before, back in 2003 I  
9 think it was. As it relates -- are you coming as a  
10 neutral and detached witness or have some sort of bias  
11 one way or the other for this particular issue?

12 MR. von SPAKOVSKY: I'm not quite sure  
13 how to answer that question.

14 SEN. WEST: Well, let me ask the  
15 question this way: You are a former Republican chair,  
16 are you not?

17 MR. von SPAKOVSKY: I was a county party  
18 Republican chair over 10 years ago.

19 SEN. WEST: Okay. Have you authored  
20 studies or position papers on requiring voter IDs at  
21 polling locations?

22 MR. von SPAKOVSKY: I have. In fact, I  
23 wrote an article for a Texas Law Review on it.

24 SEN. WEST: Have you authored articles  
25 on requiring the verification of social security

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1 numbers of voters?

2 MR. von SPAKOVSKY: I have. And, in  
3 fact, that's now a federal requirement under the Help  
4 America Vote Act.

5 SEN. WEST: Have you authored articles  
6 on eliminating no-fault absentee voting?

7 MR. von SPAKOVSKY: I believe I have,  
8 yes.

9 SEN. WEST: And what's the rationale --  
10 what is your rationale for no-fault absentee voting?  
11 And let's define it first of all. As I understand  
12 no-fault absentee voting, that basically means that a  
13 person should not be able to give any reason not to --  
14 any reason in order to cast an absentee ballot. So a  
15 person who may very well have business outside of the  
16 county on Election Day, if you had your way, they  
17 would not be able to vote. Correct?

18 MR. von SPAKOVSKY: That's incorrect,  
19 Senator.

20 SEN. WEST: Okay. Then what is the  
21 elimination of no-fault absentee voting?

22 MR. von SPAKOVSKY: There are some  
23 states -- in most states, you have to have a reason to  
24 vote absentee: You're disabled, you're elderly,  
25 you're going to be out of town on business. I

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1 completely agree with those, plus the fact if you're a  
2 military voter. There are some states where you don't  
3 have to have any reason to vote absentee.

4 SEN. WEST: Is Texas one of those  
5 states?

6 MR. von SPAKOVSKY: I'm not sure what  
7 the rule is in Texas.

8 SEN. WEST: If we were, then you would  
9 want to eliminate that. Right?

10 MR. von SPAKOVSKY: Well, there are two  
11 things there, Senator. The first is that absentee  
12 ballot fraud is one of the biggest sources of voter  
13 fraud. In fact, I've written a paper about that.  
14 And, second, there's more than one study -- in fact,  
15 one by the Center For the Study of the American  
16 Electorate which indicates that states that have put  
17 in no-fault absentee balloting, in fact, it has  
18 possibly hurt the turnout of their voters.

19 SEN. WEST: In terms of other articles  
20 that you have worked on, the white papers that you  
21 have written eliminating motor voter registration --

22 MR. von SPAKOVSKY: That's incorrect.

23 SEN. WEST: Okay. You're not for  
24 eliminating motor voter registration?

25 MR. von SPAKOVSKY: I think there are

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1 problems with mail-in voter registration, but I also  
2 think that the provisions of motor voter which require  
3 you to be able to get registered to vote when you go  
4 get your driver's license or when you go to a public  
5 assistance office, I think those are very good  
6 provisions.

7 SEN. WEST: What about the requirement  
8 of two witnesses on a notary to sign an absentee  
9 ballot, are you for? Have you advocated that or what?

10 MR. von SPAKOVSKY: I believe that  
11 because of the problems with absentee ballots and  
12 voter fraud, that having either a witness or a notary  
13 for an absentee ballot is a good idea.

14 SEN. WEST: You have indicated that  
15 there's numerous studies that show that there has been  
16 no impact, negative impact on the minority vote in  
17 several states, and you've alluded to some 2008  
18 elections. Let me put a pin in that for a second.  
19 Have you been the author of any of the studies that  
20 you have mentioned as relates to voter suppression?

21 MR. von SPAKOVSKY: To voter  
22 suppression?

23 SEN. WEST: Right -- oh, I'm sorry. I  
24 should not have said that.

25 MR. von SPAKOVSKY: I --

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1                   SEN. WEST: I should not have said voter  
2 suppression. I apologize. Have you been the author  
3 of any studies that deal with the impact of voter ID  
4 on minority votes?

5                   MR. von SPAKOVSKY: Yes.

6                   SEN. WEST: And which studies have those  
7 been?

8                   MR. von SPAKOVSKY: I wrote a paper that  
9 looked at the State of Georgia and some other states  
10 that had voter ID laws. And I looked at turnout of  
11 African-American voters, both before the law went into  
12 effect and after the law went into effect.

13                  SEN. WEST: In the State of Georgia?

14                  MR. von SPAKOVSKY: And, yes, I looked  
15 at the State of Georgia.

16                  SEN. WEST: For what year -- years?

17                  MR. von SPAKOVSKY: I started with the  
18 first voter ID law that went into effect in Georgia in  
19 1999, which was then amended later on, and I looked at  
20 the effects of all of those laws.

21                  SEN. WEST: Okay. Did you also look at  
22 2008?

23                  MR. von SPAKOVSKY: The paper was  
24 written before the 2008 election.

25                  SEN. WEST: Have you looked at any --

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1 have you been the author of any studies that looked at  
2 the 2008 election?

3 MR. von SPAKOVSKY: I've written several  
4 articles about that, yes, sir.

5 SEN. WEST: As relates to those  
6 articles, did you conclude that -- was that in the  
7 State of Indiana or Georgia or what?

8 MR. von SPAKOVSKY: In some of the  
9 articles I've written, I've mentioned election results  
10 in both Indiana and in Georgia.

11 SEN. WEST: And so it's your testimony  
12 that voter ID had no negative impact on the minority  
13 vote in either one of those states in 2008?

14 MR. von SPAKOVSKY: That's what the  
15 facts and figures from the election show.

16 SEN. WEST: Did you take into  
17 consideration who the candidates were at that time in  
18 Indiana and Georgia. And --

19 MR. von SPAKOVSKY: Yes, Senator.

20 SEN. WEST: -- did that have an impact?  
21 Were you able to check out the influence of President  
22 Barack Obama being on the ballot?

23 MR. von SPAKOVSKY: Senator, turnout was  
24 up all over the country, particularly in the minority  
25 community, because of Sen. Barack Obama. The point,

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1     however, is that the two states with the strictest  
2     voter ID laws in the country had turnout that was  
3     records and ahead of other states where turnout was  
4     also up, because of Barack Obama being on the ballot;  
5     and, yet, those states don't have voter ID. If the  
6     claim, which I know you believe is true, that voter  
7     ID --

8                 SEN. WEST: You don't know what I  
9     believe, first of all.

10                MR. von SPAKOVSKY: If people are going  
11     to claim that voter ID suppresses the vote of minority  
12     voters, then why would, in Georgia, they have a record  
13     turnout, for example, in the Democratic turnout where,  
14     you know, 95 percent of African-Americans there vote,  
15     in a state where the African-American population is  
16     about 26-27 percent; and, yet, they have record  
17     turnout. If, in fact, voter ID --

18                SEN. WEST: Let me ask you -- let me  
19     finish --

20                MR. von SPAKOVSKY: May I answer the  
21     question?

22                SEN. WEST: Well, hold on. Let me --  
23     answer my question. I would appreciate it. All  
24     right. The question is real simple. Did you consider  
25     the influence -- in coming to the conclusion that you

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1 did on the studies, did you consider the influence  
2 that President Barack Obama had on energizing the  
3 Democratic base in both of those states?

4 MR. von SPAKOVSKY: Yes, sir, I did.

5 SEN. WEST: And were you able to factor  
6 that out before you came up with your conclusions, by  
7 using a valid statistical model? And, if so, what was  
8 that statistical model?

9 MR. von SPAKOVSKY: I did not do a  
10 statistical analysis. I used figures put out by  
11 Curtis Gans at American University who has election  
12 return figure from every state in the country.

13 SEN. WEST: So your study -- and I have  
14 not read your study. So your study was a compilation  
15 of election results? You --

16 MR. von SPAKOVSKY: I wrote an article  
17 in which I looked at the election results all around  
18 the country. And those election results, as reported  
19 by American University, indicated that Indiana, for  
20 example, had the largest increase in Democratic  
21 turnout of any state in the country from the --

22 SEN. WEST: I understand that; I  
23 understand exactly what you're saying. But I'm just  
24 trying to make certain I understand the study. You  
25 took the results of the elections and then used that

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1 in order to craft, analyze it and then craft a  
2 conclusion based on those election results. Is that  
3 what you're telling me?

4 MR. von SPAKOVSKY: Yes, sir.

5 SEN. WEST: Okay. So how did you factor  
6 in the influence that then Sen. Barack Obama had on  
7 energizing the election base?

8 MR. von SPAKOVSKY: The point, Senator,  
9 is that the State of Indiana has the strictest photo  
10 ID law in the country; and, yet, they had the largest  
11 increase in turnout in the Democratic primary of any  
12 state in the country. So if, in fact, that photo ID  
13 laws was going to suppress the vote of minority  
14 voters, they would not have had such a huge increase  
15 in that state.

16 SEN. WEST: So you have not had an  
17 opportunity to look at it in an election where the  
18 Democratic base isn't as energized as it was with  
19 Barack Obama to determine whether or not it has any  
20 impact?

21 MR. von SPAKOVSKY: Senator, I think, in  
22 fact, one of the studies that I mentioned, which there  
23 was a study that was done in Missouri looking at the  
24 2006 election which, as you know, was an off-year  
25 election. Barack Obama was not on the ballot. And,

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1 in fact, in 2006, when the photo ID law in Indiana was  
2 in -- was finally in effect, not only did turnout go  
3 up two percent, but the only statistically  
4 significant -- let me find this. Here we go.

5 In fact, this is a quote from the study.  
6 "There is no evidence that counties with higher  
7 percentages of minority, poor, elderly or less  
8 educated populations suffered any reduction in voter  
9 turnout." This was in 2006. In fact, quote, "The  
10 only consistent and statistically significant impact  
11 of photo ID in Indiana is to increase voter turnout in  
12 counties with a greater percentage of Democrats  
13 relative to other counties."

14 SEN. WEST: Now, let me ask you this:  
15 Isn't it a fair statement that there are those in  
16 academia that disagree with your conclusions?

17 MR. von SPAKOVSKY: There may be, yes.

18 SEN. WEST: You don't know of any?

19 MR. von SPAKOVSKY: There may be some  
20 studies that do. Most of the studies say that it  
21 doesn't --

22 SEN. WEST: So there are those that  
23 disagrees with your conclusions. Is that correct?

24 MR. von SPAKOVSKY: I'm sure there's  
25 always people that --

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1                   SEN. WEST: Are there some social  
2 scientists that disagree with your conclusions, sir?

3                   MR. von SPAKOVSKY: You'll have to look  
4 that up, Senator.

5                   SEN. WEST: Okay.

6                   SEN. DUNCAN: Senator, y'all are talking  
7 over each other a little bit. So if you could allow  
8 the witness --

9                   SEN. WEST: And I apologize.

10                  SEN. DUNCAN: -- room before you --

11                  SEN. WEST: We've got two lawyers up  
12 here. Yes, sir.

13                  All right. So there are individuals of  
14 noted reputations in academia that disagree with your  
15 conclusions?

16                  MR. von SPAKOVSKY: Senator, I have  
17 spoken about and testified about the various studies  
18 that I have seen, which I think are valid studies  
19 which show that there is no effect.

20                  SEN. WEST: Sir, that was not the  
21 question. The question was, is do you know of persons  
22 in academia that disagree with your conclusions?

23                  MR. von SPAKOVSKY: There may be, yes.

24                  SEN. WEST: So the answer to the  
25 question is yes, there are persons that disagrees with

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1 your conclusions?

2 MR. von SPAKOVSKY: I'm sure there are.

3 SEN. WEST: Okay. Very good. Now, as  
4 it relates to the issue of retrogression, help me walk  
5 through this. Which should we be considering in terms  
6 of whether or not this particular piece of legislation  
7 is, in fact -- you have been at the Department of  
8 Justice. Correct?

9 MR. von SPAKOVSKY: Yes, sir. I worked  
10 there for four years as a career lawyer.

11 SEN. WEST: Okay. You have had to  
12 overrule some of the professional staff sometimes when  
13 they come to their different conclusions than you  
14 otherwise came to. Is that correct?

15 MR. von SPAKOVSKY: I did not overrule  
16 anyone. I made recommendations to the Assistant  
17 Attorney General on matters.

18 SEN. WEST: You've had to make  
19 recommendations counter to recommendations made by  
20 you -- made to you by staff that was reporting to you,  
21 though. Isn't that correct?

22 MR. von SPAKOVSKY: Yes.

23 SEN. WEST: Okay. And some of it has  
24 been in the area of voters' right -- most -- oh, all  
25 of it has been in the area of votes' rights. Is that

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1 correct -- specifically Section V?

2 MR. von SPAKOVSKY: Sir, that is  
3 incorrect. I was the voting counsel. All I worked on  
4 were voting issues.

5 SEN. WEST: That's exactly right. Okay.  
6 Now, in that capacity, what would you advise us -- I'm  
7 going to say take your hat off as a Republican, take  
8 your hat off as any affiliation law. What specific  
9 advice would you give this body as it relates to  
10 analyzing the legislation before us?

11 MR. von SPAKOVSKY: Well, under  
12 Section 5, you use the retrogression standard, which  
13 means that you can't do something that's going to have  
14 a disparate impact on minority voters. And, you know,  
15 everything I've seen, certainly based on the Georgia  
16 legislation, which is stricter than this, there is no  
17 disparate impact.

18 SEN. WEST: And so there is no disparate  
19 impact. Is that what you're saying --

20 MR. von SPAKOVSKY: Correct.

21 SEN. WEST: -- based on the legislation?  
22 Okay. Now, let me ask you this: What have you seen  
23 that leads you to that conclusion?

24 MR. von SPAKOVSKY: The Georgia bill --  
25 the Georgia legislation, in fact, is stricter

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1       legislation. It has fewer IDs that meet the  
2       requirements of the law. That law did not have a  
3       retrogressive impact. In fact, the election results  
4       show that clearly. Arizona is another state that put  
5       in a voter ID law. It also was pre-cleared by the  
6       Justice Department. And it also was recently upheld  
7       by a federal district court who said that it did not  
8       violate any voting right statutes and was perfectly  
9       constitutional.

10               SEN. WEST: So then your comment about  
11       what we're doing here is not going to be retrogressive  
12       is based on the Georgia statute. Is that what you're  
13       saying?

14               MR. von SPAKOVSKY: It's based on my  
15       experience in this area, all the studies I've seen,  
16       the results of elections, that this statute is not  
17       going to be shown to be retrogressive.

18               SEN. WEST: Let me ask you this: Some  
19       of the career -- help us understand the Justice  
20       Department, specifically the voting rights section.  
21       You have career employees there. Right?

22               MR. von SPAKOVSKY: Yes. I was a career  
23       employee there.

24               SEN. WEST: Okay. And are some of those  
25       employees still there that were with you at the time

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1       that you were there?

2                   MR. von SPAKOVSKY: I'm sure there are,  
3       yes.

4                   SEN. WEST: Okay. Some of those  
5       employees that you've had to overrule their analysis,  
6       are they still there?

7                   MR. von SPAKOVSKY: I don't know. I  
8       haven't worked there since 2005, so I really don't  
9       know who is still there.

10                  SEN. WEST: Okay. All right. But it's  
11       a different Justice Department -- right? -- Department  
12       of Justice. Right?

13                  MR. von SPAKOVSKY: The career staff at  
14       the Justice Department -- the Justice Department is  
15       made up of around 99 percent career staff. Political  
16       appointees are a very small percentage. So from year-  
17       to-year, administration-to-administration, the career  
18       staff, with some turnover, pretty much stays the same.

19                  SEN. WEST: How long were you in the  
20       Department of Justice?

21                  MR. von SPAKOVSKY: Four years.

22                  SEN. WEST: Four years. When did you go  
23       into the Department of Justice?

24                  MR. von SPAKOVSKY: 2001.

25                  SEN. WEST: And what position was that?

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1 MR. von SPAKOVSKY: I was a trial  
2 attorney in the Civil Rights Division.

3 SEN. WEST: In the Civil Rights  
4 Division. Okay. Thank you very much, sir.

5 SEN. DUNCAN: Sen. Shapleigh.

6 SEN. SHAPLEIGH: Thank you, Mr. Chair.

7 Mr. Spakovsky, I would like to go over  
8 some testimony that you just laid out with your  
9 handout here that we have. I'm looking at Page 3  
10 specifically. And when you're talking about Texas, as  
11 far as I can tell, in connection with the problem of  
12 voter fraud here, you're saying in the late 1800's,  
13 Harris County was infamous for massive election fraud  
14 such that "Harrison County Methods" became synonymous  
15 with election fraud, and then Ballot Box 13 in Lyndon  
16 Johnson's 1948 race, to reports of illegal aliens in  
17 Bexar County. What reports are you referring to on  
18 illegal aliens in Bexar County?

19 MR. von SPAKOVSKY: There were newspaper  
20 reports indicating that -- I believe the clerk there  
21 had found individuals who were not U.S. citizens who  
22 had both registered and voted in elections there.

23 SEN. SHAPLEIGH: And were any cases  
24 brought in connection with those newspaper reports, to  
25 your knowledge?

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1 MR. von SPAKOVSKY: I don't know,  
2 Senator.

3 SEN. SHAPLEIGH: So what you represent  
4 here as illegal aliens voting and risking criminal  
5 prosecution, you're telling us now you don't know  
6 whether anything came of that at all?

7 MR. von SPAKOVSKY: I don't know what  
8 the end results were of the investigations there.

9 SEN. SHAPLEIGH: Do you know anything  
10 else about Texas voter fraud allegations, other than  
11 what you've laid out in your report --

12 MR. von SPAKOVSKY: I believe one of  
13 your -- I've read testimony by a Mr. Bettencourt who I  
14 believe was in -- may have been in Harris County who  
15 testified at a House committee meeting hearing in  
16 Washington about finding individuals who were not U.S.  
17 citizens who had registered and voted in elections in  
18 his county.

19 SEN. SHAPLEIGH: Are you aware of the  
20 investigation done here by the Attorney General of the  
21 State of Texas in 2006?

22 MR. von SPAKOVSKY: No, sir, I have not  
23 done a detailed study of that.

24 SEN. SHAPLEIGH: Would it surprise you,  
25 with what you're saying in this report, that not a

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1 single prosecution brought in this state would have  
2 been solved by this voter ID; that is, mail-in ballots  
3 and other issues were the issues at the root of these  
4 indictments and not a single case has been brought in  
5 the State of Texas on vote fraud that photo ID would  
6 solve? Would that surprise you?

7 MR. von SPAKOVSKY: No. As I said,  
8 Senator -- and I refer you again to the Supreme Court  
9 case -- as they pointed out, it's very hard to detect  
10 a problem like that if you don't have the tool  
11 necessary to detect it, which is photo ID.

12 SEN. SHAPLEIGH: Let me go to your  
13 career. You come here from The Heritage Foundation.  
14 Is that correct?

15 MR. von SPAKOVSKY: That's correct, sir.

16 SEN. SHAPLEIGH: And would you say  
17 you're here as a fair and balanced witness whose  
18 testimony is designed to move us to a non-partisan  
19 correct decision that would serve the State of Texas  
20 in this matter?

21 MR. von SPAKOVSKY: As I said before,  
22 I'm here testifying on my own behalf, not on behalf of  
23 The Heritage Foundation. And I think all of the  
24 evidence on photo ID indicates that it should be a  
25 bipartisan solution, because not only can it prevent

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1 voter fraud but it does not hurt turnout.

2 And, in fact, I believe in Indiana, for  
3 example -- again, the state with the strictest photo  
4 ID law in the country -- they for the first time in I  
5 don't know how many decades actually voted for a  
6 Democratic presidential candidate. So it clearly had  
7 no effect and it may have helped the Democratic Party  
8 in that state.

9 SEN. SHAPLEIGH: So in connection with  
10 your reputation as you come here, you're coming, in  
11 your words, as a fair and balanced witness?

12 MR. von SPAKOVSKY: I believe so,  
13 Senator, yes.

14 SEN. SHAPLEIGH: Who is Joseph Rich?

15 MR. von SPAKOVSKY: He was former Chief  
16 of the Voting Section who now works for the Lawyers'  
17 Committee for Civil Rights, which is a liberal  
18 advocacy organization.

19 SEN. SHAPLEIGH: So he was the Chief of  
20 the Voting section. He was a career, as you describe  
21 it, attorney in the Justice Department and Chief of  
22 the Voting Section from 1999 to 2005. Is that  
23 correct?

24 MR. von SPAKOVSKY: He was a career  
25 lawyer, as I was a career lawyer at the section.

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1 SEN. SHAPLEIGH: Who is Robert Kengle?

2 MR. von SPAKOVSKY: He is also a former  
3 career lawyer.

4 SEN. SHAPLEIGH: And he was Deputy Chief  
5 of the Voting Section, 1999 to 2005. Correct?

6 MR. von SPAKOVSKY: I don't remember the  
7 exact years. I know he was a career lawyer there.

8 SEN. SHAPLEIGH: And Jon Greenbaum,  
9 Senior Trial Attorney, Voting Section, 1997 to 2003,  
10 your colleague when you were at the Department of  
11 Justice. Correct?

12 MR. von SPAKOVSKY: Mr. Greenbaum was a  
13 lawyer for the Lawyers' Committee for Civil Rights and  
14 was the lawyer who brought the lawsuit in Georgia  
15 against the photo ID law which was eventually  
16 completely dismissed by the federal court there.

17 SEN. SHAPLEIGH: But he was your  
18 colleague in the Department of Justice. "Yes" or  
19 "No"?

20 MR. von SPAKOVSKY: He was a trial  
21 lawyer there.

22 SEN. SHAPLEIGH: When you were there?

23 MR. von SPAKOVSKY: At some point, yes.

24 SEN. SHAPLEIGH: And David J. Becker,  
25 Senior Trial Attorney, Voting Section, 1998 to 2005,

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1 your colleague at the Department of Justice. "Yes" or  
2 "No"?

3 MR. von SPAKOVSKY: He was a trial  
4 attorney there, too.

5 SEN. SHAPLEIGH: Bruce Adelson, Senior  
6 Trial Attorney, Voting Section, 2000 to 2005, your  
7 colleague at the Department of Justice?

8 MR. von SPAKOVSKY: He was a trial  
9 attorney there, yes.

10 SEN. SHAPLEIGH: Toby Moore, Voting  
11 Section, 2000 to 2006, Political Geographer,  
12 Department of Justice?

13 MR. von SPAKOVSKY: Yes.

14 SEN. SHAPLEIGH: Now, you were nominated  
15 to serve, I believe, for the Federal Election  
16 Commission, were you not?

17 MR. von SPAKOVSKY: I was.

18 SEN. SHAPLEIGH: Did these attorneys  
19 deliver a letter to the Chairman of that committee,  
20 Dianne Feinstein, in connection with your nomination?

21 MR. von SPAKOVSKY: They did, Senator.  
22 And I wrote a response to that letter which is on file  
23 at the committee, as is their letter, because, frankly  
24 their letter was filled with misrepresentations, and  
25 it had a lot of things in it that were not true and

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1     which were proveably not true about the administration  
2     of the Civil Rights Division.

3                 SEN. SHAPLEIGH: Well, if you have that  
4     letter, we would I think at this point like to see it,  
5     because I'm about to go through their letter where  
6     one, two, three, four, five, six of your colleagues  
7     signed a letter -- I think this is an unprecedented  
8     act in the Department of Justice to sign a letter on a  
9     nomination of a colleague that works with them in the  
10    Voting Section of the Department of Justice. And I  
11    want to quote from this.

12                "We are deeply disturbed that the  
13    tradition of fair and vigorous enforcement of this  
14    nation's civil rights laws and the reputation for  
15    expertise and professionalism of the Division and the  
16    Department has been tarnished by partisanship. Over  
17    the past five years, the priorities of the Voting  
18    Section have shifted from its historic mission to  
19    enforce the nation's civil rights laws without regard  
20    to politics, to pursuing an agenda which placed the  
21    highest priority on the partisan political goals of  
22    the political appointees who supervised the Section.  
23    We write to urge you not to reward one of the  
24    architects of that unprecedented and destructive  
25    change with another critical position enforcing our

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1 country's election laws."

2 Were they talking about you in this  
3 letter?

4 MR. von SPAKOVSKY: Senator, that letter  
5 was full of misrepresentations and, frankly, outright  
6 lies.

7 (Simultaneous discussion)

8 MR. von SPAKOVSKY: Senator, I'll be  
9 glad to talk to you about voter ID. But, you know,  
10 I'm a lawyer. And one thing I have found in the  
11 courtroom is that, quite frankly, when the lawyer on  
12 the other side has neither the facts nor the law on  
13 their side, that's when they usually resort to  
14 personal attacks.

15 (Applause)

16 SEN. DUNCAN: (Raps gavel)

17 SEN. SHAPLEIGH: Mr. von Spakovsky --  
18 and, Mr. Chair, I would ask if we could have a  
19 direction to the witness to answer the questions  
20 presented. The simple question was, "Is the person  
21 they're referring to in this letter you?"

22 MR. von SPAKOVSKY: And as I told you,  
23 Senator, I wrote a full response to that letter  
24 pointing out all of the inaccuracies and  
25 misrepresentations in that letter.

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1                   SEN. SHAPLEIGH: So this is about you,  
2 this is directed at your behavior in that Department  
3 of Justice? Does it say that?

4                   MR. von SPAKOVSKY: It is a letter about  
5 a fictional person that they say is me but is not.

6                   SEN. SHAPLEIGH: It is a fictional  
7 person that they worked with for four years, but it's  
8 not you. Is that what you're saying?

9                   MR. von SPAKOVSKY: I'm saying, Senator,  
10 that that letter was written by individuals who now  
11 work for very liberal advocacy groups, one of them,  
12 for example, working for a group that lost in Federal  
13 Court in Georgia when it sued over voter ID law that  
14 they didn't like. And, you know, if that's a  
15 reflection of his legal judgment on matters like that,  
16 I think that says a lot about the inaccuracies in that  
17 letter.

18                  SEN. SHAPLEIGH: Well, I'm just going to  
19 take it that they're talking about you. "After  
20 careful review" -- I'm now on Page 3 -- "of the  
21 Georgia voter ID law, career staff responsible for the  
22 review came to a near unanimous decision, consistent  
23 with the precedent established by the Department in  
24 previous reviews; that the Georgia provision would  
25 negatively affect minority voting strength. Four of

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1 the five career professionals on the review team  
2 agreed. The one who did not had [almost] no  
3 experience in enforcing §5 and had been hired only  
4 weeks before the review began through the political  
5 hiring process described" in this letter. "The  
6 recommendation to object to the law, detailed in a  
7 memo exceeding 50 pages was submitted on August 25,  
8 2005. The next day, Georgia submitted corrected data  
9 on the number of individuals who had state-issued  
10 photo identification. The career review team was  
11 prevented by Mr. von Spakovsky from analyzing this  
12 data and incorporating the corrected data into their  
13 analysis. Instead, there was an unnecessary rush to  
14 judgment and the law was summarily precleared on  
15 August" the 25th, the day after their monologue was  
16 delivered to you. The law was pre-cleared by you the  
17 same day the corrected data had been submitted.  
18 "Subsequent analysis of this data by a Georgia  
19 political scientist revealed that hundreds of  
20 thousands of voters did not have the required voter  
21 ID, a disproportion number of whom were poor, elderly  
22 and, most importantly for the Voting Rights Act  
23 review, minorities. In short, this data provided  
24 further evidentiary support for the objection  
25 recommended by the professional staff. Subsequently,

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1 a federal court in Georgia found that this law  
2 violated the poll tax provision of the Constitution."

3 Are they referring to actions taken by  
4 you on August the 25th and 26th of 2005?

5 MR. von SPAKOVSKY: Senator, there are  
6 so many facts wrong and so many misrepresentations in  
7 that letter, and you've also gotten a lot of other  
8 facts incorrect, that it would take me at least  
9 probably half an hour to answer everything you've got  
10 wrong in that case, the more important of which is  
11 that the career Chief of the Voting Section who was a  
12 30-year veteran of the Department of Justice, someone  
13 who had been enforcing the Voting Rights Act and  
14 filing suits in southern states like Mississippi and  
15 Alabama for 30 years, sent a recommendation that said  
16 that the law should be approved, that there was no  
17 evidence of retrogression.

18 And I would be happy to give you some of  
19 the data, Senator. For example, the Department of  
20 Driver Services, which is I believe the same as the  
21 department here that gives your driver's license, has  
22 showed that there were 6.5 -- 6.4 million individuals  
23 in Georgia who had driver's licenses and photo IDs.  
24 There were only 4.5 million registered voters.

25 That department had racial data. For

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1 60 percent of the cardholders, they found that  
2 28 percent of the individuals who held driver's  
3 licenses were African-American, which was higher than  
4 the black percentage of the voting age population in  
5 Georgia, indicating that African-Americans in Georgia  
6 held driver's licenses at a slightly rate than white  
7 Georgians.

8 They also submitted student photo ID  
9 information. The student photo ID issued by a state  
10 university is an accepted ID under the law. The  
11 information from the state colleges showed that black  
12 students represented 26.8 percent of public college  
13 students in the state, which was slightly more than  
14 their share of the voting age population.

15 Finally, the census data that was  
16 submitted showed that 19.4 percent of African-  
17 Americans in Georgia worked for the government, either  
18 at a local, state or federal level, while only 14  
19 percent of whites did. Government-issued employee IDs  
20 were also acceptable. So all of the information  
21 submitted indicated that African-Americans in the  
22 State of Georgia had voter ID at the same rates or, in  
23 fact, slightly higher than white Georgians.

24 The election results in the state since  
25 then showed that that was, in fact, true. There was a

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1 preliminary injunction issued in the federal lawsuit  
2 that was filed. If you read that case carefully, you  
3 will find that the Judge said that he made no finding  
4 and was not basing his preliminary injunction on the  
5 Voting Rights Act because there was no racial  
6 discrimination proven in the case.

7 He did find a constitutional violation.  
8 But the Supreme Court said in a case called Reno vs.  
9 Bossier Parish some years ago that when the Justice  
10 Department is reviewing a Section 5 submission, they  
11 can only use the voting rights retrogression standard.  
12 They cannot refuse to pre-clear a law because of a  
13 constitutional violation. And as for any  
14 constitutional violation, as you know, the Supreme  
15 Court took care of that recently in the Indiana case  
16 when it said there is no constitutional violation by a  
17 photo ID law.

18 And I would mention that in the final  
19 decision by the federal judge, not a preliminary  
20 injunction, but the final decision, the Judge found  
21 there was no violation of the Voting Rights Act, there  
22 was no constitutional violation.

23 And on the issue of a poll tax, I would  
24 be happy to read to you what the Court said about  
25 that. He said -- because the plaintiffs were trying

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1 to argue that because of incidental costs, like having  
2 to travel to an office to get an ID or obtaining a  
3 birth certificate, that that was a poll tax.

4 The federal courts dismissed the claim,  
5 saying, "That argument represents a dramatic  
6 overstatement of what fairly constitutes a poll tax;  
7 thus, the imposition of tangential cost does not  
8 transform a regulation into a poll tax. Moreover, the  
9 cost of time and transportation cannot possibly  
10 qualify as a prohibited poll tax because those same  
11 costs also result from voter registration and  
12 in-person voting requirements which one would not  
13 reasonably construe as poll tax."

14 SEN. SHAPLEIGH: Let me ask you this:  
15 Were you in Florida in 2000?

16 MR. von SPAKOVSKY: I went down briefly  
17 as an observer, as did a lot of people, to watch the  
18 counting of the vote.

19 SEN. SHAPLEIGH: This was before you got  
20 into the Voting Rights Section of the Justice  
21 Department?

22 MR. von SPAKOVSKY: I did lawyering in  
23 Atlanta at the time when that occurred.

24 SEN. SHAPLEIGH: Now, let me continue  
25 with this letter from your colleagues.

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1 "Mr. von Spakovsky drafted legal briefs  
2 in lawsuits between the Republican and Democratic  
3 parties in three battleground states" -- this is  
4 during the 2004 election cycle -- "Ohio, Michigan and  
5 Florida, just before the election, all in favor of the  
6 Republican party's position and included a position  
7 that the Civil Rights Division had never taken  
8 [before] with regards to the statutes it enforcers,  
9 i.e. that there was no private right of action to  
10 enforce HAVA. These briefs ran counter to the well-  
11 established practice of the Civil Rights Division not  
12 to inject itself into litigation or election  
13 monitoring on the eve of an election where it could be  
14 viewed as expressing a political preference or could  
15 have an impact on a political dispute."

16 Did you participate in the drafting of  
17 these briefs?

18 MR. von SPAKOVSKY: Well, I'm very glad  
19 you brought that up, Senator. The briefs that were  
20 filed in that case, the Justice Department made the  
21 argument that there was no private right of action  
22 under the Help America Vote Act, which was a federal  
23 law passed in 2002.

24 It just so happens that a week before  
25 this past November election, the Democratic Secretary

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1 of State of the State of Ohio filed the exact same  
2 type of lawsuit, also claiming that there was no  
3 private right of action under the Help America Vote  
4 Act, after she was sued by local party officials in  
5 Ohio.

6 And the Supreme Court, in fact, issued a  
7 decision saying, "There is no private right of action  
8 under the Help America Vote Act. So, you see, if the  
9 career lawyers whose letter you are discussing, at the  
10 time they wrote their letter, they said it was their  
11 legal opinion that that position was wrong. Well, it  
12 turns out they were wrong. In fact, the Supreme Court  
13 has said the position that the Justice Department took  
14 in that brief, all three briefs, were the correct  
15 position.

16 SEN. SHAPLEIGH: Was there any career  
17 DOJ lawyer who signed your letter, your response to  
18 Dianne Feinstein in connection with your nomination at  
19 the FEC?

20 MR. von SPAKOVSKY: I had letters of  
21 recommendation --

22 SEN. SHAPLEIGH: Did anyone --

23 MR. von SPAKOVSKY: -- from many  
24 different officials, and I was the one that was asked  
25 to respond to that letter.

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1                   SEN. SHAPLEIGH: Let me see if I can't  
2 get you to answer the questions I'm asking. Did  
3 anyone sign your letter in response to these six  
4 career officials at DOJ to say what they're saying is  
5 not true?

6                   MR. von SPAKOVSKY: Senator, I sent a  
7 letter to the committee.

8                   SEN. SHAPLEIGH: So no one signed your  
9 letter, just you?

10                  MR. von SPAKOVSKY: I was the one asked  
11 to respond to the committee, Senator.

12                  SEN. SHAPLEIGH: Let me ask you about  
13 your participation in the 2003 Texas case, the  
14 redistricting case. There was a consensus of opinion  
15 by the career DOJ officials in that case, was there  
16 not?

17                   What I am looking at here is DOJ career  
18 lawyers submitting a unanimous recommendation to  
19 object to an unprecedented mid-decade redistricting  
20 plan that Texas submitted in 2003, submitted by the  
21 career staff, a unanimous recommendation. That was  
22 rejected by political appointees, including yourself.  
23 Is that true or not true?

24                  MR. von SPAKOVSKY: Senator, I was not a  
25 political appointee at the department. I have said

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1 that several times. And if you want to talk about the  
2 Texas redistricting case, I would point out --

3 SEN. SHAPLEIGH: I just need to  
4 understand this --

5 MR. von SPAKOVSKY: No. I --

6 SEN. SHAPLEIGH: -- was there a  
7 unanimous recommendation --

8 MR. von SPAKOVSKY: That unanimous --

9 SEN. SHAPLEIGH: -- by --

10 MR. von SPAKOVSKY: That recommendation  
11 was incorrect, Senator.

12 SEN. DUNCAN: Hang on a minute. We're  
13 talking over each other. One at a time.

14 Senator, you've got a question on the  
15 floor.

16 MR. von SPAKOVSKY: May I answer?

17 SEN. DUNCAN: The witness can answer.

18 SEN. SHAPLEIGH: Let me ask, if I may,  
19 Mr. Chairman.

20 SEN. DUNCAN: All right.

21 SEN. SHAPLEIGH: This letter from six  
22 DOJ career lawyers says that a unanimous  
23 recommendation to object to the mid-decade  
24 re-redistricting plan in Texas was submitted and later  
25 rejected by political appointees. True or not true?

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1 MR. von SPAKOVSKY: Mr. Chairman, I  
2 can't answer that question "Yes" or "No." The only  
3 way to answer it properly and to get all the facts out  
4 is to give a detailed explanation of the legal review  
5 and the court case decisions in the Texas  
6 congressional redistricting plan. I would be happy to  
7 do that if you would like me to do so.

8 SEN. SHAPLEIGH: Well, let me just get  
9 one question answered. Did the career team -- not the  
10 political appointees -- have a unanimous position that  
11 the re-redistricting plan of 2003 did not comply with  
12 the Voting Rights Act and unanimously said, "We ought  
13 to reject it," and take that position? "Yes" or "No"?

14 MR. von SPAKOVSKY: Senator, the  
15 recommendation that they made was that there were 11  
16 majority/minority districts in Texas that needed to be  
17 protected under Section 5 of the Voting Rights Act.  
18 As you probably well know, a federal court in 2001  
19 found that there were not 11 districts that needed to  
20 be protected in this state. A three-judge panel said  
21 there were eight districts in this state that needed  
22 to be protected.

23 And when the Supreme Court issued its  
24 final decision in the LULAC v. Perry case, the Supreme  
25 Court said, "No, there are only eight protected

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1 districts." So if you want to be able to show that  
2 the legal opinions of those career lawyers were not  
3 only wrong but, in fact, you know, the Supreme Court  
4 and other judges have said that they were legally  
5 incorrect, I would be happy to agree with you.

6 SEN. SHAPLEIGH: When you were nominated  
7 to the FEC, a United States senator from Illinois  
8 submitted a letter to the committee, and I would like  
9 to read from that.

10 "Mr. von Spakovsky's role in supporting  
11 the Department of Justice's quixotic efforts to attack  
12 voter fraud raises significant questions about his  
13 ability to interpret and apply the law in a fair  
14 manner, as does his decision to ignore the  
15 recommendations of long-serving career attorneys on  
16 several occasions. Moreover, his role in the creation  
17 of the Georgia voter ID law should have led to his  
18 refusal from the Department of Justice's evaluation of  
19 the law. His failure to recuse himself from that case  
20 further demonstrates a lack of judgment that is not  
21 befitting an FEC Commissioner."

22 Do you recall getting this letter?

23 MR. von SPAKOVSKY: I don't recall the  
24 letter. But I would say, Senator, that the claim that  
25 I was involved in creating the Georgia voter ID law is

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1 factually completely incorrect. At the time the  
2 Georgia voter ID law was being pushed through the  
3 Legislature in 2005 in Georgia, I had been in  
4 Washington working for the Department of Justice since  
5 2001. So the letter is based, frankly, on a  
6 complete -- frankly, a lie, saying that I had any  
7 involvement, and that is completely untrue.

8 SEN. DUNCAN: Senator, before you -- and  
9 you can keep going. But I just wanted to give you a  
10 little bit of a notice, at 6:45 I think it will be two  
11 hours since we've had a break for the court reporter.  
12 So I just wanted to give you, if you wanted to -- you  
13 can resume or whatever, but I wanted to give you a  
14 little bit of notice of that.

15 SEN. SHAPLEIGH: I think I'm done. If I  
16 could mark these as the next exhibit -- I think it's  
17 Exhibit 15 -- the letters to the committee with  
18 respect to the nomination at the federal level.

19 SEN. WEST: Mr. President --  
20 Mr. Chairman, would the Senator yield?

21 SEN. SHAPLEIGH: Yes.

22 SEN. WEST: Who was the senator who  
23 authored that letter?

24 SEN. SHAPLEIGH: The senator was Barack  
25 Obama.

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1 SEN. WEST: Oh, okay. Thank you.

2 So he was a liar. Okay.

3 SEN. DUNCAN: Being as we're not subject  
4 to the hearsay rule, I'll go ahead and admit this  
5 evidence.

6 Are you bringing them down?

7 (Exhibits handed to Secretary Spaw)

8 SEN. DUNCAN: Senator, I have here  
9 Exhibit 15, which is a letter dated June 11, 2007, to  
10 Diane (sic) Feinstein. And then there is another  
11 letter in there.

12 SEN. WILLIAMS: Mr. Chairman?

13 SEN. DUNCAN: We'll have Exhibit 15A, B  
14 and C. Exhibit A is the June 11, 2007 letter.  
15 Exhibit B is the -- is this a blog or -- this is  
16 signed by him? Okay. Or it's an e-mail from --  
17 okay -- from Barack Obama, June 12, 2007, and then  
18 also a letter from Public Citizen dated October 3,  
19 2007, which will be Exhibit 15C.

20 (Exhibits Nos. 15A, 15B and 15C marked  
21 and admitted)

22 SEN. DUNCAN: Members, we've been going  
23 for about two hours. It's my plan to try to give the  
24 court reporter a break every hour and 45 minutes to  
25 two hours, as necessary. It will be a 10-minute

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1 break --

2 SEN. WENTWORTH: Mr. President, could I  
3 ask one before we break?

4 SEN. DUNCAN: Sen. Wentworth.

5 SEN. WENTWORTH: I don't believe our  
6 witness came prepared to defend himself from attacks  
7 like this, and I would like to give him the  
8 opportunity to file, as part of the record, his  
9 response to the letters that have just been filed as  
10 exhibits.

11 SEN. WEST: Mr. President?

12 SEN. DUNCAN: Is there any objection?

13 SEN. WEST: There is objection.

14 SEN. DUNCAN: Why is there objection?

15 SEN. WEST: Well, first of all, the  
16 characterization that he has been attacked, I object  
17 to that.

18 SEN. DUNCAN: Well, we'll --

19 SEN. WEST: Like any other witness, we  
20 should be able to cross-examine him like we cross-  
21 examined other witnesses. I resent the  
22 characterization of him being attacked.

23 SEN. WENTWORTH: Well, you can resent it  
24 all you want.

25 SEN. WEST: Well, you can say it all you

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1 want to also. He wasn't attacked, fellow.

2 SEN. DUNCAN: Let's take one thing at a  
3 time. Is there any objection to the witness being  
4 able to submit testimony to the committee --

5 SEN. WEST: There is objection.

6 SEN. DUNCAN: -- to be received in the  
7 record post- --

8 SEN. WEST: There is objection, yes.

9 SEN. WENTWORTH: Mr. Chairman, I move  
10 that the witness be permitted to respond in writing to  
11 the letters that have been obviously not to his  
12 advantage.

13 SEN. WEST: This man has characterized  
14 the President of the United States as a liar.

15 SEN. DUNCAN: All right. We're going to  
16 take a break and we will be back in session at  
17 seven -- rather, 6:50 -- 6:55. I'm sorry.

18 (Recess: 6:46 p.m. to 7:06 p.m.)

19 SEN. DUNCAN: The Senate Committee of  
20 the Whole will come to order. If we could get our  
21 witness back up here. I think Sen. Shapleigh rested.  
22 And we will call Sen. Williams.

23 SEN. WILLIAMS: Thank you, Mr. Chairman.  
24 When the witness returns, I have some questions for  
25 him.

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1 (Brief pause)

2 SEN. DUNCAN: The witness is present.

3 You can ask your questions.

4 SEN. WILLIAMS: Thank you, Mr. Chairman.

5 Mr. Spakovsky, I don't want to butcher  
6 your name. Would you pronounce it for me once. I  
7 know I'm doing --

8 MR. von SPAKOVSKY: You did a great job.

9 "Spa-kos-ski."

10 SEN. WILLIAMS: Say it again.

11 MR. von SPAKOVSKY: "Spa-kos-ski."

12 SEN. WILLIAMS: "Spa-kos-ski." Okay.

13 von "Spa-kos-ski." Okay.

14 I had some questions for you about a  
15 report that I think you referred to earlier in your  
16 testimony. Are you familiar with the report by  
17 Jeffrey Milyo of the effects -- it's titled "The  
18 Effects of Photographic Identification on Voter  
19 Turnout in Indiana: A County-Level Analysis." Are  
20 you familiar with that report?

21 MR. von SPAKOVSKY: Yes, Senator. In  
22 fact, that's the report I was referring to that took a  
23 look at what happened in Missouri in I believe 2006  
24 when the photo ID law went into effect for the first  
25 time.

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1                   SEN. WILLIAMS: Now, just for the  
2 record -- and I'm going to submit this report into the  
3 record in a moment. And I think there are plenty of  
4 copies floating around here. I think everybody has  
5 got one.

6                   Mr. Milyo is a professor in the Truman  
7 School of Public Affairs and the Department of  
8 Economics at the University of Missouri. And he's a  
9 Hanna Family Scholar in the Center for Applied  
10 Economics at the University of Kansas School of  
11 Business. And he's a Senior Fellow at the Cato  
12 Institute in Washington, D.C.

13                  Would it be your opinion that Mr. Milyo  
14 has written an academic study, that this would qualify  
15 as what one might commonly refer to as an academic  
16 study of the effects of photo ID in Indiana?

17                  MR. von SPAKOVSKY: Yes, sir, he is a  
18 very good researcher.

19                  SEN. WILLIAMS: Okay. Now, before we  
20 get into the report, in one of the press releases that  
21 I've seen about this report, he asserts that,  
22 "Previous studies have examined the effects of voter  
23 ID laws more generally but none of these separately  
24 analyzes the effects of so-called 'mandatory photo ID'  
25 on turnout in Indiana."

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1                   He goes on to say that, "I examine a  
2                   variety of models of voter turnout," and after  
3                   controlling for several factors that influence  
4                   countywide turnout, there is no consistent or  
5                   statistically significant evidence that photo ID law  
6                   depressed turnout in counties with greater percentages  
7                   of minority, poor or elderly voters. Contrary to  
8                   conventional wisdom, turnout in Democratic-leaning  
9                   counties actually increased in the wake of the new  
10                  photo ID requirements, all else constant.

11                  Now, what's interesting about this  
12                  report to me as I reviewed it is, there's been a lot  
13                  that's been said on this floor about the effect of  
14                  President Obama's election on the turnout,  
15                  particularly in Georgia, because there is a large  
16                  African-American population there. And, of course,  
17                  people turned out in record numbers. But this report  
18                  is actually -- the time period, as I understand it,  
19                  includes two election cycles. In neither one of  
20                  those, Mr. Obama wasn't running for president during  
21                  either one of those election cycles, so this report  
22                  wouldn't be influenced by that. Would that be your  
23                  understanding?

24                  MR. von SPAKOVSKY: That is my  
25                  understanding, Senator.

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1                   SEN. WILLIAMS: Okay. And in the  
2 report -- and I just want to get this into the record  
3 here, and I would like for you to comment on this if  
4 you would, please. "In order to measure" -- he says  
5 in his report, "In order to measure the overall effect  
6 of photo ID on voter turnout across the 92 Indiana  
7 counties, I estimate an ordinary least squares  
8 regression controlling for county-fixed effects and  
9 year effects. The county-fixed effects account for  
10 factors such as demographic differences across  
11 counties, while the year effects account for the  
12 different composition of state races in each election  
13 year. However, there has only been one general  
14 election in Indiana post-photo ID, so it is not  
15 possible to separately identify the overall effects of  
16 photo ID on voter turnout absent additional  
17 assumptions. For this reason, the present analysis  
18 focuses on the effects of photo ID on different groups  
19 of eligible voters.

20                   "I evaluate claims about the relative  
21 effects of voter ID on racial and ethnic minorities,  
22 the poor, the elderly, persons without a high school  
23 diploma and Democrats by estimating the effects of  
24 photo ID on turnout in counties with greater  
25 percentages of those groups as a percent of county

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1 population. However, these demographic variables do  
2 not vary over time, since they are taken from the 2000  
3 U.S. Census. This means that it is not possible to  
4 control for county-fixed effects when estimating the  
5 effects of photo ID on these particular demographic  
6 groups. For this reason, I account for differences in  
7 the demographic composition of counties by including  
8 control variables for per capita income and the  
9 percent of county population by several categories,  
10 including: Age, education, ethnicity, female labor  
11 force participation, military status, non-citizens,  
12 party, poverty, race, and rural status."

13 All of that is included in the appendix  
14 to this report.. And he also goes on to say, "I also  
15 check the sensitivity of results when this list of  
16 control variables is pared down to just age,  
17 education, ethnicity, income, and race."

18 I don't know if you have a copy, but I  
19 believe that's on Page 4 and 5 of the report. Do you  
20 have a copy of it up there?

21 MR. von SPAKOVSKY: I don't have a copy  
22 of the report.

23 SEN. WILLIAMS: Would you like it?

24 MR. von SPAKOVSKY: But I've read it.

25 SEN. WILLIAMS: Okay. Now, what I would

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1     like for you to comment on -- and that's a mouthful  
2     that I just read -- but what I would like for you to  
3     comment on is, how does the statistical analysis that  
4     this academic has performed, would this be something  
5     that would be comparable to the regression analysis  
6     that we've heard talked about? Are we looking at the  
7     same kinds of things here, how this would influence  
8     minority turnout? Can you comment on that for me?

9                     MR. von SPAKOVSKY: Well, I'm not an  
10    expert on statistical analysis. But my understanding,  
11    from reading that and many other reports is that, yes,  
12    that's the kind of analysis he was doing to try to see  
13    if the photo ID law of Indiana would have any effect,  
14    particularly on different groups, because he was  
15    looking, as you read it, different groups: The poor,  
16    elderly, different minority groups. And he found that  
17    it did not have any effect on depressing their  
18    turnout.

19                    SEN. WILLIAMS: So it would be a  
20    reasonable conclusion for somebody to draw, after  
21    reading this report, that the effect of the Indiana  
22    voter ID law, it had really no effect on the turnout  
23    among any of the groups that the DOJ Civil Rights  
24    Department would be concerned about when they're doing  
25    an analysis?

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1 MR. von SPAKOVSKY: Under Section 5,  
2 that's correct.

3 SEN. WILLIAMS: Under Section 5. That  
4 would be your conclusion?

5 MR. von SPAKOVSKY: That is correct.

6 SEN. WILLIAMS: Okay. And so he goes  
7 on -- if I would -- if you could just bear with me a  
8 few minutes. There's a couple of other points that I  
9 want to make sure that you have an opportunity to  
10 comment on. He says in his conclusion, the  
11 discussion, that "Given the context of the existing  
12 research on voter turnout, my findings for Indiana are  
13 completely unsurprising. Despite the attention-  
14 grabbing and often strident claims that voter  
15 identification is the modern version of the poll tax  
16 and the like, nothing could be further from the truth.  
17 Existing theory and evidence from decades of social  
18 science research do not support the contention that  
19 photo ID requirements are likely to have a large and  
20 detrimental impact on turnout; nor does the previous  
21 empirical evidence find any significant impact of  
22 photo identification on racial or ethnic minorities.  
23 Further, the best previous evidence to date also finds  
24 no significant impact of photo ID on the poor or the  
25 elderly."

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1                   He goes on to say that the findings that  
2                   emerge are, I believe, four-fold: One, that an  
3                   overall county-level turnout -- he did a county-level  
4                   analysis. Now, I think that's important when he's  
5                   looking at it for all 92 counties. Do you know if  
6                   that would be more or less detailed than they would do  
7                   at the Department of Justice? Would they do a  
8                   statewide analysis or would they do it on a county-by-  
9                   county analysis? Do you know?

10                  MR. von SPAKOVSKY: I guess it would  
11                  just depend on the particular case.

12                  SEN. WILLIAMS: Okay. And then an  
13                  insignificant increase in the relative turnout for  
14                  counties with a greater percentage of minority and  
15                  poor populations; three, no consistent or significant  
16                  impact on the relative turnout in counties with a  
17                  greater percentage of less educated and elderly  
18                  voters; and finally, No. 4, no significant -- excuse  
19                  me -- a significant relative increase in turnout for  
20                  counties with a higher percentage of Democratic  
21                  voters. His final conclusion is that you actually had  
22                  more turnout in Democratic precincts on a county level  
23                  after this law was enacted than you did before. Does  
24                  that surprise you?

25                  MR. von SPAKOVSKY: It does not surprise

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1 me, because my experience in the election area,  
2 frankly, is that when people have confidence that  
3 their vote is going to count, they go to the polls.

4 SEN. WILLIAMS: Thank you very much.

5 Mr. Chairman, I would like to submit  
6 this report with whatever our next exhibit number is.

7 SEN. DUNCAN: Senator, that would be 16.  
8 And will you state the title of the report and the  
9 date.

10 SEN. WILLIAMS: The report is "The  
11 Effects of Photographic Identification on Voter  
12 Turnout in Indiana: A county-level Analysis," by  
13 Jeffrey Milyo.

14 SEN. DUNCAN: Okay. What's the date of  
15 the article?

16 SEN. WILLIAMS: The report is dated --  
17 it was revised December of 2007.

18 SEN. DUNCAN: Okay. It will be received  
19 into the record.

20 (Exhibit No. 16 marked and admitted)

21 SEN. DUNCAN: Are you completed with  
22 your -- Senator Watson.

23 SEN. WATSON: Thank you, Mr. Chairman.

24 I just have a couple of questions.

25 First of all, who funded the Milyo study that we just

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1       talked about? Do you know?

2                   MR. von SPAKOVSKY: I don't know.

3                   SEN. WATSON: Do you know whether it was  
4       ever peer-reviewed?

5                   MR. von SPAKOVSKY: I don't know the  
6       answer to that.

7                   SEN. WATSON: Okay. Just so that I'm  
8       clear on why you're here today, first of all, you've  
9       not done any sort of statistical analysis of the  
10      effect that the new requirements of proposed Senate  
11      Bill 362 would have on African-Americans in Texas?

12                  MR. von SPAKOVSKY: I have not done a  
13      study.

14                  SEN. WATSON: And you haven't done that  
15      with regard to Hispanics?

16                  MR. von SPAKOVSKY: No.

17                  SEN. WATSON: Or people making less than  
18      \$35,000 in the State of Texas?

19                  MR. von SPAKOVSKY: No.

20                  SEN. WATSON: You've not done any  
21      statistical analysis, nor been asked to, about the  
22      effect of the new requirements of the proposed Senate  
23      Bill 362 on people who speak only Spanish or  
24      Vietnamese in the State of Texas?

25                  MR. von SPAKOVSKY: I have not.

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1                   SEN. WATSON: Have you done any sort of  
2                   statistical analysis with regard to the potential  
3                   impact of the new requirements of proposed Senate Bill  
4                   362 on seniors or students or people with disabilities  
5                   in the State of Texas?

6                   MR. von SPAKOVSKY: I have not, Senator.

7                   SEN. WATSON: Do you have any knowledge  
8                   that you can share with us regarding the impact that  
9                   this proposed legislation would have on people who  
10                  live along the border of Texas?

11                  MR. von SPAKOVSKY: Is that somehow  
12                  different than --

13                  SEN. WATSON: Well, you may have just  
14                  answered my question.

15                  MR. von SPAKOVSKY: Well, you know, I  
16                  have not done a study of Texas.

17                  SEN. WATSON: Okay.

18                  MR. von SPAKOVSKY: But there have been  
19                  plenty of other studies done, all of which have been  
20                  mentioned, that have looked at these issues.

21                  SEN. WATSON: Fair enough. And that's  
22                  part of what I want to make sure is that we're clear,  
23                  because since we are in Texas and we're talking about  
24                  the impact on Texans -- for example, do you have any  
25                  data with you today on whether or not African-

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1 Americans of Texas are more or less likely to have  
2 driver's licenses than whites?

3 MR. von SPAKOVSKY: I haven't seen that  
4 data. I did take a look, Senator, before I came down,  
5 at some data that is available from the United States  
6 Government. And the U.S. Department of  
7 Transportation, the Federal Highway Administration  
8 highway statistics for 2006 showed that the total  
9 number of licensed drivers in Texas, age 18 and over,  
10 is 14.6 million.

11 The Census Bureau, current population  
12 survey, also for 2006, shows that the number of  
13 citizen voting age population is 14 million four. So  
14 there are actually more driver's licenses issued in  
15 the State of Texas than there are individuals eligible  
16 to vote in the State of Texas.

17 SEN. WATSON: And, of course, 16-year-  
18 olds are available to get licenses in Texas, even  
19 though they're not eligible to vote. How many --

20 MR. von SPAKOVSKY: The numbers --

21 SEN. WATSON: -- licenses were lost in  
22 the State of Texas last year?

23 MR. von SPAKOVSKY: I don't know,  
24 Senator, but the numbers I gave for the total licensed  
25 drivers were licensed drivers age 18 and up.

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1 SEN. WATSON: All right.

2 MR. von SPAKOVSKY: I took out the  
3 numbers for individuals who were below the age of 18.

4 SEN. WATSON: How many of those licenses  
5 were lost last year?

6 MR. von SPAKOVSKY: I have no idea.

7 SEN. WATSON: How many of them were  
8 duplicate licenses?

9 MR. von SPAKOVSKY: I don't know.

10 SEN. WATSON: Thank you, Mr. Chairman.

11 SEN. DUNCAN: Senator Ellis.

12 SEN. ELLIS: Thank you, Mr. President.

13 Mr. von "Kosky" -- did I get that right?

14 MR. von SPAKOVSKY: "Spa-kos-ski."

15 SEN. ELLIS: "Spa-kos-ski." I'm sorry.  
16 Is this your first time in Texas?

17 MR. von SPAKOVSKY: No, sir.

18 SEN. ELLIS: Have you been a frequent  
19 visitor to the Lone Star state?

20 MR. von SPAKOVSKY: I've been down here  
21 before on business.

22 SEN. ELLIS: Well, welcome back. I know  
23 you are familiar with the Carter-Baker Commission  
24 Report. And I'm wondering, of the 87 recommendations  
25 in that report, other than the one relating to voter

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1 identification, are you in favor of the other 86 in  
2 that report?

3 MR. von SPAKOVSKY: Well, Senator, if  
4 you want to ask me about each one, one at a time --

5 SEN. ELLIS: Okay.

6 MR. von SPAKOVSKY: -- I would be happy  
7 to tell you, but I --

8 SEN. ELLIS: Any there any of them that  
9 you are against?

10 MR. von SPAKOVSKY: Senator, I read the  
11 report quite some time ago. In fact, if you look at  
12 the end of the report, you'll see me listed as one of  
13 the advisers to the Commission. I think there were  
14 lots of reports -- lots of recommendations in there I  
15 agreed with. I don't recall what all the different  
16 recommendations were. I think in many ways, you know,  
17 it was a pretty good report.

18 SEN. ELLIS: I assume you've gone around  
19 the country testifying on this subject --

20 MR. von SPAKOVSKY: I --

21 SEN. ELLIS: -- not the first time at  
22 this rodeo?

23 MR. von SPAKOVSKY: This is the first  
24 time I've really testified in a State Legislature  
25 about this issue.

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1                   SEN. ELLIS: You heard some of the  
2 discussion earlier where we were reading excerpts from  
3 editorials by President Carter and Secretary Baker.  
4 Is it a fair characterization that they were  
5 recommending voter ID as part of a package, and part  
6 of the package would be for states to comply with the  
7 REAL ID Act? Is that a fair is assessment?

8                   MR. von SPAKOVSKY: I believe there  
9 was -- if I recall, I think there was a recommendation  
10 in there about that REAL ID Act. I don't remember the  
11 detail.

12                  SEN. ELLIS: I know. But I'm saying, do  
13 you think it is a fair representation of the position  
14 of the two principals from the Carter-Baker  
15 Commission, that they were saying voter ID was part of  
16 a package and that states should adopt the REAL ID  
17 provisions, not have these different standards all  
18 around the country? Their purpose was so that more  
19 people would be able to vote, or a concentrated effort  
20 to make sure that people were aware of the new  
21 requirements. Is that a fair assessment or not?

22                  MR. von SPAKOVSKY: Senator, as I told  
23 you, it's been a while since I read the report. I,  
24 frankly, don't remember. You know, there is another  
25 witness here who I think is going to testify about it

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1       that could probably answer that question.

2                   SEN. ELLIS: But you are for the voter  
3 ID part, you read that part basically. You know  
4 you're for that part, though. Right?

5                   MR. von SPAKOVSKY: I recall that part,  
6 because I was asked about it.

7                   SEN. ELLIS: Okay. I have read that you  
8 were involved in an effort or have done some writing  
9 for the Georgia Public Policy Foundation to encourage  
10 an aggressive campaign to purge the election rolls of  
11 felons. Is that correct?

12                  MR. von SPAKOVSKY: I wrote a paper  
13 about 12 years ago, Senator. And one of the  
14 recommendations I made in the paper was that the  
15 state's voter registration list should be compared on  
16 a regular basis with the computer records of the  
17 Department of Corrections so that any individuals who  
18 had become felons and were, therefore, not entitled to  
19 vote under Georgia law, that that kind of data  
20 matching should be done. You may know that's a  
21 recommendation that Congress implemented into federal  
22 law in 2002 in the Help America Vote Act.

23                  SEN. ELLIS: Are you aware that as a  
24 result of your article, you were given credit for a  
25 very aggressive effort to remove felons off the roll

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1 in Florida, and it also led to a major voter  
2 disenfranchisement where they made mistakes and they  
3 took Ron Ellis off the rolls, even if that was not the  
4 person that committed a felony? And there were a  
5 number of people who were denied the right to vote in  
6 the 2000 election. Are you aware of that?

7 MR. von SPAKOVSKY: Senator, there was a  
8 newspaper article written some time ago claiming that  
9 I was somehow involved with that effort in Florida.  
10 That is completely untrue. I was not an election  
11 official in Florida. I had no involvement with that.  
12 I simply wrote a paper in Georgia recommending that  
13 the Georgia Legislature and Secretary of State  
14 consider running monthly computer comparisons between  
15 the state voter registration list and state  
16 corrections records which now, you know, all states  
17 are supposed to be doing that by federal law.

18 SEN. ELLIS: Maybe your reputation as a  
19 guru on these subjects -- this subject -- has preceded  
20 you around the country. You made a reference to the  
21 Lawyers' Committee on Civil Rights earlier at the  
22 beginning of your testimony. Do you remember that  
23 characterization?

24 MR. von SPAKOVSKY: I do.

25 SEN. ELLIS: What was that, if you would

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1 just repeat that for my colleagues again.

2 MR. von SPAKOVSKY: It's an advocacy  
3 group based in Washington.

4 SEN. ELLIS: I think you described that  
5 as a liberal advocacy organization.

6 MR. von SPAKOVSKY: Well, I would tend  
7 to think they probably are liberal.

8 SEN. ELLIS: All right. How would you  
9 describe the advocacy organization that you work for?

10 MR. von SPAKOVSKY: It's a conservative  
11 foundation. It's the largest -- has the largest  
12 support of any foundation in the country. It has  
13 400,000 contributors, two-thirds of whom are  
14 individuals.

15 SEN. ELLIS: Okay. So the lawyers you  
16 meet on civil rights you characterize as a liberal  
17 advocacy organization and the Heritage Foundation you  
18 would describe as the best funded and extremely  
19 conservative public policy out there?

20 MR. von SPAKOVSKY: I did not say  
21 extremely conservative. I think they're a --

22 SEN. ELLIS: But conservative?

23 MR. von SPAKOVSKY: I think they're a  
24 rule of law organization who believes in the  
25 constitution and the principles this country was

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1       founded on.

2                       SEN. ELLIS: Are you familiar with the  
3 history of the Lawyers' Committee on Civil Rights?

4                       MR. von SPAKOVSKY: I know some of it,  
5 yes.

6                       SEN. ELLIS: But what do you know about  
7 their history?

8                       MR. von SPAKOVSKY: It's an organization  
9 born, I think, during the civil rights movement to  
10 help individuals who were having their voting rights  
11 denied.

12                      SEN. ELLIS: Yes. Just for your  
13 edification and the members of this body, it was  
14 founded in 1963 as a result of a meeting that  
15 President Kennedy and Attorney General Kennedy and  
16 Vice President Lyndon Johnson, had at the White House,  
17 in which they summoned all of the major law firms in  
18 America to get involved and use their legal skills as  
19 a way of ending some of the demonstrations on the  
20 streets, to remove people who were pushing  
21 discriminatory practices all around the country, in  
22 Alabama in particular.

23                      And only because you described them as a  
24 liberal organization, as though for some reason they  
25 ought to be dismissed, I just wanted to point out that

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1 the who-is-who silk stocking law firms in America were  
2 in that room. Most of the bar associations around the  
3 country were involved, the ABA, and it is quite a  
4 distinguished history. And I just wanted to make sure  
5 that I added that to the record. Maybe you should do  
6 a little research on the --

7 MR. von SPAKOVSKY: Senator, I certainly  
8 don't disagree with you. But if you're recall, what I  
9 said about the Lawyers' Committee For Civil Rights was  
10 in the context of explaining that two of the lawyers  
11 who had complained about me, in fact, worked for the  
12 Lawyers' Committee For Civil Rights and, in fact, were  
13 lawyers who were the litigators in the federal lawsuit  
14 in Georgia against the Georgia voter ID law. And, in  
15 fact, they lost that suit. And, in fact, the legal  
16 claims that they made were dismissed by the judge  
17 there.

18 SEN. ELLIS: Are you familiar with The  
19 Federalist Society?

20 MR. von SPAKOVSKY: I am a member of The  
21 Federalist Society.

22 SEN. ELLIS: And how would you  
23 characterize that organization?

24 MR. von SPAKOVSKY: It's a group of  
25 lawyers who get together and discuss many different

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1 issues. And one of the good things about the  
2 Federalist Society, if you ever come to one of its  
3 panel discussions is, and like a lot of organizations,  
4 The Federalist Society tries to get people on both  
5 sides of an issue so that you can have a good  
6 discussion and get different points of view.

7 SEN. ELLIS: Thank you.

8 SEN. DUNCAN: Members, there's no other  
9 persons registered, so the witness will be excused.

10 MR. von SPAKOVSKY: Thank you,  
11 Mr. Chairman.

12 SEN. DUNCAN: Thank you, sir.

13 The Chair calls Tova Andrea Wang.  
14 Ms. Wang, you have 10 minutes. And you can begin.  
15 And state your name and who you represent.

16 **TESTIMONY BY TOVA ANDREA WANG**

17 MS. WANG: Sure. Thank you. My name is  
18 Tova Andrea Wang. Thanks very much for allowing me to  
19 come testify today. I'm Vice President for Research  
20 at Common Cause, a non-partisan national organization  
21 with 36 state chapters, including one right here in  
22 Texas. And I have spent the last several years doing  
23 research and writing and speaking on elections issues  
24 and voting rights issues.

25 I want to start out talking about the

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1 disenfranchising impacts of voter ID such as this. I  
2 know that for probably all of you in the room -- and I  
3 would include myself -- it seems so easy. You have an  
4 ID in your pocket right now, probably several. But I  
5 have to really emphasize to you all that it's not the  
6 case for everybody. For some people they don't have  
7 their ID, and it would be a real hardship for them to  
8 get that ID, and we need to understand this group in  
9 our society. In fact, about 10 percent of the  
10 American people don't have government-issued photo ID.  
11 And as has been pointed out repeatedly today, this is  
12 disproportionally the case with African- Americans,  
13 immigrants, the poor, people with disabilities, senior  
14 citizens and students.

15           There have been numerous studies to this  
16 effect. I want to point out one in particular,  
17 Brennan Center survey talking just about income.  
18 People with incomes lower than \$35,000 a year are  
19 twice as likely not to have the kind of ID we're  
20 talking about. 38 percent of Texans have incomes that  
21 are less than \$35,000 a year. African-Americans are  
22 three times less likely to have ID than whites. And,  
23 in fact, one-fourth of African-Americans don't have  
24 government-issued photo ID.

25           So this is what I'm talking about when

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1 I'm talking about thinking about a group in our  
2 society that maybe some of us don't have every day  
3 interaction with. People always talk about how  
4 everyone has ID, you need it to fly and rent a DVD and  
5 all of these kinds of things.

6 Now, I know Hurricane Katrina is  
7 starting to seem like a long time ago now, but I want  
8 us to think back for a second about all those people  
9 in the Astrodome. They were there because they  
10 couldn't get out, because they don't have driver's  
11 licenses, they don't have cars, they're not going out  
12 and renting DVDs on the weekends and flying on  
13 vacations. So this whole notion that everyone has ID  
14 is just untrue. Many poor people don't.

15 We talked a lot about fraud today, too.  
16 There is also a lot of mythology around that. I want  
17 to point out to you that the U.S. Department of  
18 Justice has never brought a case in the last several  
19 years of the type that would be addressed by a voter  
20 ID law such as this.

21 Now, we know this was in an environment  
22 in the last several years in which U.S. attorneys were  
23 under tremendous pressure to bring cases of voter  
24 fraud against people, and people were -- allegedly at  
25 least -- fired for not doing so; and, yet, not one

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1 case.

2 It is also especially telling that in  
3 all of the litigation, federal litigation over voter  
4 ID that's taken place, not one of the states defending  
5 these laws has come up with a single case of fraud  
6 that would have been addressed by a voter ID law. In  
7 fact, in Crawford versus Marion County, the Indiana  
8 case that we've heard a lot about today, Justice  
9 Stevens himself, in writing the opinion essentially  
10 admitted this, because the only incident of fraud that  
11 he really -- were impacted that I noticed -- we've  
12 reached back into the past for examples a lot today --  
13 was Boss Tweed in the 19th Century and one possible  
14 case that has gone unproven in Washington State in  
15 2004.

16 There is another thing I want to  
17 underscore about the fraud thing. Problems with -- or  
18 even fraud in the voter registration process is a  
19 fully unrelated, although very worrisome problem in  
20 itself. There is no available evidence that faulty or  
21 even false registration forms lead to fraudulent  
22 voting.

23 Even advocates from across the spectrum,  
24 academics and, more importantly, elections officials  
25 and registrars, as I have done in the course of my

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1 work, and they will tell you that they have not seen a  
2 case of voter registration fraud that led to a false  
3 vote.

4 I just want to talk to you even about --  
5 the most extreme discussion about voter registration  
6 just this last year around the organization ACORN;  
7 and, yet, I have not heard of one case of someone who  
8 was accused of having registered falsely through  
9 ACORN, actually showing up at the polls to vote.

10 Now, voter registration fraud is a  
11 problem. It should be taken seriously and it should  
12 be prosecuted, but voter identification will do  
13 nothing about voter registration fraud.

14 Now, it seems to me that because  
15 proponents of ID have not been able to demonstrate  
16 that fraud is actually a problem, they're claiming  
17 that we need to have voter ID laws because the  
18 American people believe it's a problem. And if they  
19 believe it's a problem, they won't have confidence in  
20 the system and they won't turn out to vote.

21 Well, we now have actual studies done  
22 that show that belief in the existence of fraud has  
23 zero impact on voting behavior. And, in fact,  
24 professors at MIT and Columbia conducted a survey  
25 published recently in the Harvard Law Review that

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1 found that perceptions of fraud have no relationship  
2 at all to someone's likelihood of voting.

3 And it's very convenient that the people  
4 that are making this perception that all about -- this  
5 is all about instilling confidence -- are the people  
6 who made people believe in the first place falsely  
7 that there was this fraud problem. So it's  
8 questionable what this is all really about.

9 I also want to point out to you that  
10 many states do not have a photo identification  
11 requirement and so -- in fact, most states don't have  
12 a photo identification requirement, and they don't  
13 have any problem with polling place fraud, as Texas  
14 does not have such a problem. And they are a diverse  
15 set of states, many with immigrant populations and  
16 they have no great problem with voter fraud.

17 And I believe that those states care  
18 just as much as the State of Texas about the integrity  
19 of their elections, and they don't feel that a voter  
20 ID requirement such as this is necessary, and they're  
21 right. And even in those states that do require a  
22 photo ID, they still allow someone to fill out an  
23 affidavit if they don't have the ID. And they are  
24 allowed to cast a regular -- not a provisional -- but  
25 a regular ballot.

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1 I also want to talk about this idea,  
2 giving people free IDs is somehow the solution. The  
3 truth is, ID is never free. It's not free for the  
4 voter and it's not free for the state either. I'm  
5 going to use Indiana as an example, to show why voter  
6 ID is never really free for the voter, as Texas is  
7 likely to have a similar program.

8 In order to get the so-called free ID,  
9 you have to do to DMV during working hours and present  
10 the primary document, a secondary document and a proof  
11 of residency or two primary documents and one proof of  
12 residency document. The only documents basically that  
13 count are passports and birth certificates.

14 Most people -- and I include myself in  
15 this -- don't have their birth certificate handy at  
16 home, so they have to go out and buy it. Well, in  
17 Texas it costs \$22 to get a birth certificate, and in  
18 many places it's much more than that and also can be  
19 very time-consuming, so that someone who needs to  
20 register and vote is going to have to do this well in  
21 advance.

22 And there are additional difficulties if  
23 your name has changed at all since you got your birth  
24 certificate, which means that particularly women who  
25 have married and have changed their name will

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1 encounter further difficulties.

2 I also heard you talking earlier today  
3 about the cost. For constitutional reasons, as was  
4 demonstrated by the Georgia litigation over this  
5 issue, you will need to ensure that every eligible  
6 voter in Texas can easily obtain a free photo  
7 identification card and to do that right and to do it  
8 within the mandates of the Voting Rights Act against  
9 poll taxes is going to require enormous resources.

10 In 2005, Georgia found this out the hard  
11 way. And I would refer you to my written testimony.  
12 I have in there in the end notes all the various steps  
13 that Georgia had to take in order to comply with the  
14 constitution, to educate people on it. It goes far  
15 beyond anything I think you discussed today does.

16 Now, we don't know exactly how much in  
17 dollars this is going to cost you. As we've talked  
18 about today, there has not been a financial impact  
19 analysis. But I will say that this is a recurring  
20 cost; this isn't going to be \$600,000 or whatever was  
21 discussed just this year. It's going to be \$600,000  
22 this year or a million dollars this year and a million  
23 dollars next year.

24 So there's going to have to be this  
25 ongoing campaign in order to comply with the

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1 constitution. And so I think that this will end up  
2 costing millions of dollars over the course of the  
3 next few years. And I say this as an outsider and  
4 perhaps, as such, it's not my place. But I do have to  
5 wonder how Texans will feel about millions of dollars  
6 being spent on a phantom problem when people are  
7 losing their jobs. And as you probably know, Texas  
8 actually is No. 1 in the number of people who don't  
9 have health insurance.

10 I want to make one other point about  
11 voter ID, that I don't think Texas might really want  
12 to get involved with right now. Studies of real  
13 elections show that whether it's purposeful or not --  
14 and I know I'm going to go overtime, so tell me if --  
15 I only have a little bit more.

16 Studies of elections show that whether  
17 it's purposeful or not, poll workers demand photo  
18 identification much more often from African-Americans  
19 and Latinos than white voters. Now we're talking  
20 about implementation on the ground at the polling  
21 place.

22 In a study conducted by a Harvard  
23 professor of tens of thousands of voters in the 2006  
24 general election, 47 percent of whites were asked for  
25 photo identification whether it was required or not,

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1 compared to 54 percent of Hispanics and 55 percent of  
2 African-Americans.

3 Harvard did a survey of thousands of  
4 voters in the 2008 Super Tuesday primary -- and I am  
5 wrapping up. 53 percent of whites were asked for  
6 photo ID, compared with 58 percent of Hispanics and a  
7 staggering 73 percent of African-Americans. And this  
8 was true even after controlling for factors such as  
9 income, education, age and region.

10 Again, another study in New Mexico in  
11 2006 again found Latinos were disproportionally asked  
12 for ID when they weren't supposed to be, and this is  
13 true in the Super Tuesday and 2007 gubernatorial  
14 elections as well.

15 Now, the point is that most states run  
16 their elections without the kind of laws that you're  
17 talking about here in Texas, and they do just fine.  
18 They have very honest elections, and I believe Texas  
19 can do just as well.

20 Texas has a very low turnout, voter  
21 turnout rate; in fact, one of the lowest in the  
22 country. Even in the historic election of 2008 when  
23 voters came out in unprecedented numbers, less than  
24 55 percent of Texans voted, earning it the dubious  
25 distinction of ranking 48th in turnout nationally.

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1                   It's my opinion that if the Texas State  
2                   Legislature is concerned about the fairness of its  
3                   elections, it would be better off using all of its  
4                   energies and resources to do something about that  
5                   problem rather than a problem it does not have.

6                   Thank you very much.

7                   SEN. CARONA: Ms. Wang, we thank you for  
8                   your testimony.

9                   The Chair at this time calls upon  
10                  Sen. Gallegos. Senator, for what purpose?

11                  SEN. GALLEGOS: To ask the witness some  
12                  questions, Mr. Chairman.

13                  SEN. CARONA: Please proceed.

14                  SEN. GALLEGOS: Thank you.

15                  **QUESTIONS FROM SENATE FLOOR**

16                  SEN. GALLEGOS: Ms. Wang, thank you for  
17                  being here. I've got several questions that I would  
18                  like to ask you. The first one is, doesn't it solve  
19                  the problem for those lacking a photo ID, that under  
20                  this legislation as presented before us today, that  
21                  you can produce two other forms of ID?

22                  MS. WANG: You know, certain groups  
23                  don't possess government-issued photo IDs. They're  
24                  also much less likely to have two forms of  
25                  identification that are on the list of other possible

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1 ID forms. And basically what you're asking people to  
2 do is, is sort of bring a file folder full of  
3 identification documents and engage in a huge campaign  
4 to make sure people know what they are.

5 And there is no affidavit option like  
6 there is in other places, if you cast a provisional  
7 ballot if you don't have ID. As I understand Texas  
8 law, they automatically won't get counted. If you  
9 cast a provisional ballot because you didn't have the  
10 requisite ID, the ballot will not count.

11 Now, I can go through the list of the  
12 various types of ID that a person can use if they have  
13 two forms of it and talk about why each one of them  
14 might be difficult. For example, one of them is, you  
15 know, using a copy of a current utility bill or a bank  
16 statement, et cetera. Well, not everyone has such  
17 documents in their name. For example, married women  
18 whose bills come in their husband's names or poor  
19 people who quite often live in multi-family homes.

20 I can go through the list and talk about  
21 why poor people or different groups of people won't  
22 have any one given form. And to ask them for two plus  
23 their voter registration certificate, as I understand  
24 it, is really asking people to just sort of dump  
25 everything they have in a folder -- and they may not

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1 have them at all -- and hope that they get past the  
2 poll worker with them.

3 And, as I say, there will be many groups  
4 that don't have them. I've talked about the birth  
5 certificate and the fact that you had to pay \$22 to  
6 get it. A divorce decree and a marriage license, a  
7 copy of a marriage license costs \$20 in Texas. A copy  
8 of a divorce decree costs \$20 in Texas, as I  
9 understand it at least. And so, you know, there are  
10 difficulties in obtaining all of these types of IDs,  
11 so it really doesn't solve the problem at all.

12 SEN. GALLEGOS: Thank you. Let me ask  
13 you this: There has been a lot of debate today on  
14 voter fraud -- and, you know, there is a lot of it; in  
15 some cases, there is none of it. Let me ask you, is  
16 there a great deal of voter fraud in the United States  
17 that justifies a voter ID?

18 MS. WANG: I won't come out here and  
19 tell you that there's not voter fraud. I will come  
20 here and tell you that there is not the type of voter  
21 fraud that a voter identification requirement such as  
22 that proposed in this legislation would do anything  
23 about.

24 And we are talking about an environment  
25 in the last several years in which you've never seen

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1 such an aggressive operation by law enforcement to  
2 ferret out instances just like what we're talking  
3 about here today, and they didn't come up with  
4 anything.

5 I'm hearing examples today. I think  
6 Mr. von Spakovsky even couldn't come up with anything  
7 in Texas since the 1800s and a ballot box stuffing  
8 case from 60 years ago. And there's just no evidence  
9 of it. There is simply no evidence of polling place  
10 fraud. Now, there are a lot of other problems in the  
11 voting system that can alter the outcome of an  
12 election. And I think it would be great if the  
13 Legislature was discussing those issues here today,  
14 but that's not what we're discussing. We're  
15 discussing something that isn't a problem.

16 SEN. GALLEGOS: Let me ask you, another  
17 issue that's being debated on the floor is financial  
18 cost. And I guess if you can explain to us, or just  
19 let us know that if there -- what financial cost is  
20 there to the state if it enacts -- let's say we enact  
21 this bill today, I would like to know what financial  
22 cost is on the voter ID and if there is any -- is this  
23 a one-time cost or have you seen in other states that  
24 the costs continue to rise or any -- not direct by the  
25 bill being passed but any indirect costs?

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1 MS. WANG: Yes. I mean, as I said, this  
2 will be a recurring cost to the state. I can only  
3 tell you what Georgia has had to go through in order  
4 to make sure that the voters are educated and the poll  
5 workers trained.

6 Before the election, the Secretary of  
7 State sends a reminder letter to over 80,000 active  
8 and inactive registered voters across the state who  
9 might not have ID. They received informational  
10 brochures and postcards leading up to the election.  
11 They contacted hundreds of thousands of voters,  
12 reminding them to bring the ID with them. They  
13 advertised extensively on radio and on cable  
14 television. They distributed information all over the  
15 state and public facilities.

16 And, of course, they had to go through a  
17 whole new separate type of training for elections  
18 officials and poll workers who -- you know, frankly,  
19 you're asking to be quasi-law enforcement authorities  
20 in determining the validity of a government-issued  
21 identification card. And all of that will have to be  
22 done every single year, and that doesn't take into  
23 account the cost of providing the so-called free ID.

24 SEN. GALLEGOS: So you're saying extra  
25 costs?

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1 MS. WANG: It's going to cost quite a  
2 lot, and it's going to cost every year.

3 SEN. GALLEGOS: You couldn't give us a  
4 figure, could you?

5 MS. WANG: It's several hundred thousand  
6 dollars a year in Georgia, which it has been pointed  
7 out is quite a smaller state than Texas is, so I would  
8 have to guess -- and I would be totally guessing --  
9 but at least a million dollars.

10 SEN. GALLEGOS: All right. Let me ask  
11 you, Ms. Wang, how many cases of election fraud  
12 brought by the United States Department of Justice  
13 over the last let's say several years were of the type  
14 that would have been addressed by voter ID?

15 MS. WANG: None.

16 SEN. GALLEGOS: None?

17 MS. WANG: None.

18 SEN. GALLEGOS: All right. Let me ask  
19 you, are there laws on the books right now that allow  
20 for prosecution of people who commit voter fraud, and  
21 is there any proof of these laws that are not working?

22 MS. WANG: Well, you know, that's one of  
23 the kind of astonishing things to me about all of  
24 this. You know, you're asking us, or people who are  
25 advocating for the ID are trying to persuade us that

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1 someone would go into a polling place to affect one  
2 vote, change one vote.

3 And basically if they're caught, which  
4 given the enormous efforts that have gone on in this  
5 state to catch people doing this, they may be -- risk  
6 going to jail for up to ten years and a minimum of two  
7 and a fine of \$10,000. I don't know what kind of  
8 lunacy that would be, to risk spending ten years in  
9 jail to change one vote at the polling place. So I  
10 think that's quite an effective deterrent, and I think  
11 it has been.

12 SEN. GALLEGOS: Okay. Ms. Wang, let me  
13 ask you, do most states have a photo ID requirement?  
14 And do the states that don't impose photo ID  
15 requirements have huge fraud problems?

16 MS. WANG: Well, as I said, about half  
17 the states have basically next to no identification  
18 requirement, and that includes states like California,  
19 and North Carolina. And, actually, while I have North  
20 Carolina on my mind, just in sort of response to  
21 things that have been said earlier, you know, the  
22 state that had the highest increase, greatest increase  
23 in turnout in the last election in 2008 was North  
24 Carolina. And not only did they not impose a voter ID  
25 requirement such as what you're discussing here today,

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1 but they did initiate same-day registration, which is  
2 a much more fruitful thing for you to be perhaps  
3 discussing.

4 But, as I say, about half the states  
5 don't have strict voter ID requirements. There are  
6 seven states that require a photo ID. And in four of  
7 those states, they allow a person to simply fill out  
8 an affidavit if they don't have the ID, and they are  
9 able to cast a regular ballot. And so we are talking  
10 about a very small universe of states that feel it  
11 necessary to put people through these hoops and  
12 hurdles in order to exercise their right to vote.

13 SEN. GALLEGOS: Ms. Wang, let me ask  
14 you, you heard the author of the bill say that we  
15 could probably give free IDs when needed. If a  
16 state -- let me ask: If a state provides a free ID to  
17 everyone, would it really be free? And with a  
18 follow-up, wasn't Indiana's ID free? And how did the  
19 free ID work in that state?

20 MS. WANG: Well, it depends on what  
21 you're going to ask people to do in order to get the  
22 free ID. I take it that there are not plans to go  
23 door-to-door to every household in the State of Texas  
24 distributing identification cards to anyone who needs  
25 one.

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1                   And so I imagine that people will have  
2                   to go to DMV during working hours. If they work on an  
3                   hourly wage job, that's probably difficult. If they  
4                   have small children, that's probably difficult. If  
5                   they have a job that relies on tips, that's probably  
6                   difficult.

7                   And then they will have to present all  
8                   sorts of identification in order to get the  
9                   identification. I imagine, if this works anywhere  
10                  close to the program in Indiana, they will probably  
11                  have to present their birth certificate. And getting  
12                  a certified copy of your birth certificate costs \$22.  
13                  How that is not a cost, how that is not ultimately a  
14                  poll tax is really beyond me.

15                  SEN. GALLEGOS: Well, I mean, I just  
16                  want to tell you that a lot of the process in this  
17                  giving a free voter ID, I mean, that was just told to  
18                  us. We really don't know how the process is going to  
19                  work on anybody asking you for a free photo ID.  
20                  That's not explained in the bill.

21                  MS. WANG: I would actually make one  
22                  follow-up point to that, which is that even in the  
23                  Indiana law, someone who comes to the polls without ID  
24                  is allowed to cast a provisional ballot and return  
25                  within 10 days, either to present identification or

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1 fill out an affidavit attesting to their indigency,  
2 that they are too poor to have ID. There isn't even  
3 that in this current bill, to allow for the  
4 possibility that there are poor people in our  
5 community who might not have the identification.

6 SEN. GALLEGOS: Let me ask you this:  
7 Let's say I'm given a free ID and I go to the polls,  
8 but I only speak Spanish, only, and the precinct  
9 worker cannot speak Spanish. Even though I have been  
10 given a free ID from the state, can that precinct --  
11 under this bill, can that precinct judge, worker, deny  
12 me the right and say, "I can't -- I don't understand  
13 you. You're going to have to give me other forms of  
14 ID"?

15 MS. WANG: Well, whether the law allows  
16 it or not, as I've indicated, that's what, practically  
17 speaking, happens all the time. What you find is, is  
18 that blacks and Latinos are far more likely to be  
19 asked by poll workers for identification, whether it  
20 is required of them or not. That's just a reality,  
21 and it's just a road that seems so unnecessary to go  
22 down.

23 SEN. GALLEGOS: But as open-ended as  
24 this bill is, that happens to me, in the example I  
25 just gave you, and the ID was given to me by the

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1 state. And they, you know, obviously took all the  
2 data that they needed and knew I was a U.S. citizen  
3 and everything. If I speak Spanish only and I'm  
4 rejected at the polls, I'm rejected at the polls  
5 because the poll worker does not speak Spanish, is  
6 that a denial of my voting rights?

7 MS. WANG: Yes, of course.

8 SEN. GALLEGOS: Okay. Let me ask you  
9 this: In states that have voter ID requirements, are  
10 there any studies that have been done which show that  
11 the ID requirements in those states have not been  
12 applied even-handedly?

13 MS. WANG: Yes. As I said, there now  
14 have been several studies done that look at thousands  
15 and thousands of voters that show pretty dramatic  
16 disparities between African-American voters and Latino  
17 voters and white voters.

18 SEN. GALLEGOS: Let me ask this, if you  
19 can explain to me and discuss the problems with  
20 vesting thousands of election judges with the  
21 authority to verify additional requirements?

22 MS. WANG: Yes. I mean, that is a huge  
23 problem. You're leaving a lot of decisionmaking  
24 authority with poll workers who are often,  
25 unfortunately, not very well-trained to begin with or

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1 often not terribly on the younger side, who will have  
2 to be given tremendous training in order to even hope  
3 that this will be applied in a consistent manner.

4 And, as I said, you're basically asking  
5 them -- I mean, another scenario I envision is,  
6 someone comes in with their government-issued photo ID  
7 that was taken 10 years ago and maybe they've gotten a  
8 little grayer or added a few pounds and don't look  
9 exactly the same as they used to. And the poll worker  
10 will say, "This isn't you." I don't know what happens  
11 in that situation.

12 SEN. GALLEGOS: One last question,  
13 Ms. Wang. Let me ask you, it's kind of like sort of  
14 the question that you already answered, only can you  
15 comment on the likelihood of election judges dealing  
16 with African-Americans, Hispanic and aged Americans,  
17 that they will ask for proof of their ID at a higher  
18 rate than others?

19 MS. WANG: Yes. I mean, that's clearly  
20 borne out by the surveys that have been done to date.  
21 We've known this anecdotally for years. And I don't  
22 want to presume any particular motivation or reason  
23 for this. All I know is that as a practical matter,  
24 that's what you see.

25 SEN. GALLEGOS: Ms. Wang, thank you very

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1 much.

2 MS. WANG: Thank you.

3 SEN. DUNCAN: Sen. Lucio.

4 SEN. LUCIO: Thank you, Mr. President.

5 And I'll be brief.

6 I understand you spent several years  
7 doing research and writing on election reform and the  
8 voting rights issue. And you're a member of -- excuse  
9 me. Your organization has got a membership in 36  
10 state chapters. How extensive have your studies been  
11 in Texas on voter ID? And, actually, what I really  
12 want to know is, along the border of Texas, do you  
13 have any information that would allow me to better  
14 understand how this issue pertains to minorities or  
15 Hispanics along the Texas-Mexico board and to that of  
16 other states such as Indiana, Georgia, given the  
17 cultural value as a way of life, et cetera, taking  
18 into consideration how this would impact those that I  
19 represent compared to an Hispanic, let's say, in  
20 Indiana or Georgia?

21 MS. WANG: I have not looked at that,  
22 and I think that that would be something that would be  
23 very important for someone to analyze before passing  
24 such a law and submitting it for pre-clearance.

25 SEN. LUCIO: I guess I can download a

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1 lot of information on your website in terms --

2 MS. WANG: Sure.

3 SEN. LUCIO: -- of what you discuss here  
4 this evening?

5 MS. WANG: Sure.

6 SEN. LUCIO: Thank you very much.

7 SEN. DUNCAN: Ms. Wang, we have a copy  
8 of your written testimony exhibit which will be  
9 submitted in the record as Exhibit 17, dated March 10,  
10 2009.

11 (Exhibit No. 17 marked and admitted)

12 MS. WANG: Thank you very much.

13 SEN. DUNCAN: Thank you. You're  
14 excused.

15 The next witness will be Cameron Quinn.  
16 Sen. Fraser.

17 Ms. Quinn, you have 10 minutes.

18 **TESTIMONY BY CAMERON QUINN**

19 MS. QUINN: Thank you very much,  
20 Senator. It's a pleasure to be here on behalf of the  
21 Carter-Baker Commission on Federal Election Reform,  
22 which was formed and issued a report in 2005. My name  
23 is Cameron Quinn. I am, among other things, a former  
24 chief state election official for the Commonwealth of  
25 Virginia. In Virginia, that's the Secretary of the

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1 State Board of Elections as opposed to the Secretary  
2 of State.

3 I'm also a former Department of Justice  
4 voting election official and spent three years as the  
5 U.S. elections advisor for IFES, which is formally  
6 known as the International Foundation For Election  
7 Systems.

8 I'm here today on behalf of the  
9 Commission, however, and I want to make sure that you  
10 know a little bit about the Commission that issued the  
11 study. In addition to President Carter and Secretary  
12 Baker, there were two former Secretaries of State -- a  
13 Republican and a Democrat -- a journalist, four former  
14 members of Congress -- including two Democrats and two  
15 Republicans: Reps. Molinari, Michel, Hamilton and  
16 Sen. Daschle -- six academics, including the President  
17 of Rice University, and five other people who were  
18 either appointed or elected in the political process,  
19 including your former Supreme Court Chief Justice, Tom  
20 Phillips. In fact, Texas was very well represented.  
21 There were four of the 21 members of the commission  
22 who, in fact, were Texans.

23 The commission was formed, organized by  
24 the American University Center for Democracy and  
25 Election Management, and it was in association with

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1 Rice University's Baker Institute for Public Policy  
2 and the Carter Center. And the activities of the  
3 Commission were supported by funding a research by the  
4 Carnegie Corporation of New York, the Ford Foundation,  
5 the Knight Foundation, the Omidyar Network and The Pew  
6 Charitable Trusts.

7 There's been a lot of reference to the  
8 report. I understand everyone is receiving a copy if  
9 they didn't already have it. In the interest of time,  
10 I'm not going to go through a lot of the details in  
11 the report but will focus on the particular issue at  
12 hand.

13 When the report was issued, there was a  
14 letter at the front of it signed by President Carter  
15 and Secretary Baker. It starts out, "Elections are  
16 the heart of democracy."

17 "If elections are defective, the entire  
18 democratic system is at risk.

19 "Americans are losing confidence in the  
20 fairness of elections, and while we do not face a  
21 crisis today, we need to address the problems of our  
22 electoral system."

23 It goes on to say, "Benefitting from  
24 Commission members with diverse perspectives, we have  
25 proposed, for example, a formula for transcending the

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1 sterile debate between integrity and access."

2 "We are recommending a photo ID system  
3 for voters designed to increase registration with a  
4 more affirmative and aggressive role for states in  
5 finding new voters and providing free IDs for those  
6 without driver's licenses. The formula we recommend  
7 will result in both more integrity and more access."

8 "We present this report because we  
9 believe the time for acting to improve our election  
10 system is now."

11 I also want to read from one other  
12 portion of the report that I think is really  
13 fundamentally at stake here, and that is that the  
14 commission, under its provisions related to voter  
15 identification says, "While the Commission is divided  
16 on the magnitude of voter fraud -- with some believing  
17 the problem is widespread and others believing that it  
18 is minor -- there is no doubt that it occurs. The  
19 problem, however, is not the magnitude of the fraud.  
20 In close or disputed elections, and there are many, a  
21 small amount of fraud could make the margin of  
22 difference. And second, the perception of possible  
23 fraud contributes to low confidence in the system. A  
24 good ID system could deter, detect, or eliminate  
25 several potential avenues of fraud -- such as multiple

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1 voting or voting by individuals using the identities  
2 of others or those who are deceased -- and thus it can  
3 enhance confidence. We view the other concerns about  
4 IDs -- that they could disenfranchise eligible voters,  
5 have an adverse effect on minorities, or be used to  
6 monitor behavior -- as serious and legitimate, and our  
7 proposal below aims to address each concern."

8 There has already been reference to the  
9 reliance on REAL ID. This was a portion of the report  
10 recommendation. But it goes on to say, "Reliance on  
11 REAL ID, however, is not enough."

12 "Where they will need identification for  
13 voting, IDs should be easily available and issued free  
14 of charge."

15 I can go into any number of things  
16 related to the report. I know that there has been  
17 reference to some of the other provisions. But  
18 recognizing that time is short, I want to also  
19 reference a letter to the editor that was written by  
20 Andrew Young, the former Mayor of Atlanta, who had  
21 spoken to the commission, actually not at a public  
22 hearing but at a private dinner they had ahead of  
23 time. And he wrote this in September of 2005.

24 "Why did I give conditional support to  
25 the Commission on Federal Election Reform for its

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1 recommendation of the required federal ID when I met  
2 with members last month? First, because there is  
3 already a photo ID requirement in federal law, the new  
4 REAL ID requirement. Why not use it to improve the  
5 voter registration and election administration?

6 "Second, any required photo ID must be  
7 made widely available, easily accessible and free of  
8 cost. A photo ID is a weapon against the bondages of  
9 poverty. Low income neighborhoods have ubiquitous  
10 predatory check-cashing centers which thrive because  
11 other establishments won't cash checks without a  
12 standard photo ID."

13 And finally, the Commission was rather  
14 pleased at the time the Supreme Court issued the  
15 Crawford vs. Marion County case, that, in fact, the  
16 commission's work was recognized -- in fact, in a  
17 dissent written by Justice Breyer, who writes toward  
18 the end of his dissent, "Of course, the Carter-Baker  
19 Report is not the Constitution of the United States.  
20 But its findings are highly relevant to both  
21 legislative and judicial determinations of the  
22 reasonableness of a photo ID."

23 While Justice Breyer did not support the  
24 Indiana voter ID law, he does seem to suggest that  
25 trying to conform it with Carter-Baker's

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1 recommendations would have been, in his opinion,  
2 appropriate.

3 Mr. Chairman, I am delighted to answer  
4 questions. But I think in the interest of time, I'll  
5 stop there.

6 SEN. DUNCAN: Thank you, Ms. Quinn.

7 Sen. Ellis?

8 SEN. ELLIS: Thank you, Mr. President.

9 **QUESTIONS FROM SENATE FLOOR**

10 SEN. ELLIS: Thank you, Ms. Quinn, for  
11 coming.

12 What position did you play with the  
13 Baker-Carter Commission, or Carter-Baker Commission?  
14 What was your role?

15 MS. QUINN: My title was an Academic  
16 Advisor. I was not on the commission, but I was one  
17 of a host of people, including some of the people here  
18 today, who helped advise the commission.

19 SEN. ELLIS: Do you have any idea how  
20 many academic advisors they had?

21 MS. QUINN: It was somewhere in the  
22 range of a couple of dozen. There is a list at the  
23 end of the report. And I can't say that I've  
24 memorized the list or counted them today.

25 SEN. ELLIS: I was told maybe somewhat

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1 in the neighborhood of 100. Do you know?

2 MS. QUINN: If there were, I never saw a  
3 list that was that long, but that doesn't mean that's  
4 not the case.

5 SEN. ELLIS: Okay. And what is your  
6 position now? What do you do now?

7 MS. QUINN: Currently, sir, I'm an  
8 independent consultant.

9 SEN. ELLIS: You are a consultant?

10 MS. QUINN: Yes. sir.

11 SEN. ELLIS: And who are some of your  
12 clients?

13 MS. QUINN: Well, at the moment I am  
14 working with the Republican Lawyers.

15 SEN. ELLIS: I couldn't hear you.

16 MS. QUINN: The Republican lawyers.

17 SEN. ELLIS: Republican lawyers.

18 MS. QUINN: The Republican National  
19 Lawyers Association.

20 SEN. ELLIS: That's a good group.

21 MS. QUINN: It is a good group. They  
22 fight very hard --

23 SEN. ELLIS: They didn't give me an  
24 interview when I got out of law school.

25 MS. QUINN: Did they?

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1 SEN. ELLIS: But it's a good group.

2 And in your capacity here today --

3 MS. QUINN: Yes, sir.

4 SEN. ELLIS: -- are you representing the  
5 Carter-Baker Commission or are you just testifying  
6 from the vantage point of someone?

7 MS. QUINN: No, sir. I am here and was  
8 requested by Secretary Baker's staff to be here on  
9 behalf of the Carter-Baker Commission.

10 SEN. ELLIS: Okay. You heard my  
11 discussion earlier, and you made reference to the  
12 totality of the recommendations in the report --

13 MS. QUINN: Yes.

14 SEN. ELLIS: -- 86 or 87, somewhere in  
15 that neighborhood.

16 MS. QUINN: I believe it was 87. I will  
17 say that I did not go back to double check today.

18 SEN. ELLIS: That's okay. What would  
19 you characterize as the major recommendations in the  
20 report? Obviously, voter ID has gotten the attention  
21 of a number of states for some reason.

22 MS. QUINN: Well, let me say that the  
23 Executive Summary nicely summarizes them. And they  
24 propose a voter registration system in which the  
25 states, not the localities, are responsible for the

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1 accuracy and quality of the voter lists, and other  
2 ways to improve voter registration. They propose the  
3 voter ID requirements.

4 SEN. ELLIS: The REAL ID Act?

5 MS. QUINN: The REAL ID Act.

6 SEN. ELLIS: You heard the discussion,  
7 maybe heard the discussion between Sen. Fraser and me  
8 a bit earlier in which he quoted an opinion editorial  
9 and I quoted one. Now, I tried, to the best of my  
10 ability, to be balanced, because I made reference to  
11 the section in which they said both Republicans and  
12 Democrats were at fault or something to the effect, if  
13 I can paraphrase it, that Republicans were pulling out  
14 the ID provision. Based on the comment, I took it to  
15 mean because they felt it would give them an electoral  
16 advantage. And it said Democrats were criticizing the  
17 voter ID provision and not making the case to go and  
18 do all of the other things, I assume making reference  
19 to the REAL ID provision. Was that a fair  
20 characterization of what they were saying in that  
21 opinion editorial?

22 MS. QUINN: I think it is fair to say  
23 that for some reason, election reform tends to divide  
24 Republicans and Democrats, probably because they  
25 recognize it may have an effect on their elections,

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1 and that generally speaking, Democrats seem to be more  
2 concerned about access and Republicans more concerned  
3 about integrity. But I would say to you that it's my  
4 impression, from talking to many Democrats and  
5 Republicans, both elected and election officials, that  
6 they all agree that both are important.

7 SEN. ELLIS: Well, from your vantage  
8 point as an advisor, or one of the academic advisors  
9 to the commission, would it be fair to say that you --  
10 not the commission -- you would have some concerns  
11 about whether or not there would be a disproportionate  
12 impact on certain groups if you don't adopt more than  
13 the voter identification provision? REAL ID provision  
14 in the major one that both President Carter and  
15 Secretary Baker made reference to in that editorial.  
16 Do you have any concerns about a state just adopting  
17 the voter ID provision and that concern being whether  
18 or not it would have a disproportionate impact on  
19 certain groups, whatever they are, people who have --  
20 students from abroad, any concerns on your part about  
21 a disproportionate impact on certain groups?

22 MS. QUINN: Senator, I would say that I  
23 always, when I was an election official, was concerned  
24 about trying to make sure that we enfranchised as many  
25 voters as possible. And I understand that you're

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1 asking me about this particular bill, but I think it  
2 needs to be looked at in totality of other Texas  
3 election law and procedure. And I do believe that  
4 Texas has a number of other -- of these provisions. I  
5 know, for example, that under the Help America Vote  
6 Act, they already have adopted a statewide system.  
7 Now, I can't recall the details of their statewide  
8 system, and there may be some issues with it, but I  
9 know that they've already adopted provisional  
10 balloting. That's also required by the Help America  
11 Vote Act.

12 SEN. ELLIS: Well, the reason I'm asking  
13 you the question that I asked is because you are here,  
14 and it says Academic Advisor, Carter-Baker Commission.

15 MS. QUINN: Yes, sir.

16 SEN. WHITMIRE: So I'm assuming that  
17 Secretary Baker didn't ask you to just come here for  
18 the weather in Texas.

19 MS. QUINN: No, sir!

20 SEN. ELLIS: So it would give the  
21 impression somehow that you are endorsing or you are  
22 for just having Texas adopt the Voter ID Act. I mean,  
23 that would be the impression that a reasonable member  
24 of this body would get.

25 So I'm asking you, since you say

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1 Secretary Baker asked you to come, to comment on the  
2 opinion editorial that I could give you again to look  
3 at in which he and President Carter said they were  
4 concerned that a voter ID bill by itself would have a  
5 disproportionate impact on certain groups and that  
6 states ought to adopt the REAL ID Act, and there are  
7 other recommendations. They were concerned, based on  
8 that opinion editorial -- I think you heard me read it  
9 earlier -- about just picking out one piece.

10 MS. QUINN: I agree that that's the  
11 case. They are concerned that people focus on only  
12 one or two of the requirements.

13 SEN. ELLIS: Any guess why people maybe  
14 in the Lone Star State -- I know maybe you don't come  
15 here that often -- would just pick this part, the  
16 voter ID part?

17 MS. QUINN: Sir, it is my understanding  
18 that this state has not only picked that, that there  
19 are other provisions from the Carter-Baker Report That  
20 have been addressed by the state. I don't know most  
21 of them, because I'm not someone who is frequently in  
22 Texas. The longest time I spent in Texas was five  
23 weeks once when I was summer-clerking. So I can't say  
24 that I know Texas law or Texas procedure, but I do  
25 know certain things that they have adopted that are

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1 part of the report.

2 SEN. ELLIS: And what are those?

3 MS. QUINN: Well, as I said, I know that  
4 you-all have some form of provisional balloting. I  
5 know that you-all have some kind of statewide voter  
6 registration database. I don't know the particulars,  
7 but I do know that those are in effect.

8 SEN. ELLIS: Enjoy your stay in Texas.  
9 Thank you very much.

10 MS. QUINN: Thank you, sir.

11 SEN. DUNCAN: We have from Ms. Quinn an  
12 exhibit that I think is entitled "Building Confidence  
13 in U.S. Elections," and I believe it is the Carter-  
14 Baker Commission Report. Is that correct?

15 You need to say that into the --

16 MS. QUINN: Yes, sir.

17 SEN. DUNCAN: All right. We will submit  
18 that in the record as Exhibit 18.

19 (Exhibit No. 18 marked and admitted)

20 SEN. DUNCAN: Sen. Fraser.

21 SEN. FRASER: Cameron, thank you for  
22 being here today. We're honored to have you with us.  
23 I was actually sitting, listening to your conversation  
24 with Sen. Ellis. And you said one thing that I want  
25 to make sure that we give, you know, an "attaboy" to,

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1     because it's something that -- the message that I  
2     continue trying to project is the fact that your goal  
3     at the Commission was to enfranchise as many voters as  
4     possible. And I think that is my goal by the  
5     legislation I'm laying out, that I'm hoping by the  
6     bill that I am laying out that we will encourage  
7     people that have been discouraged in the past and give  
8     them a reason to go back and vote.

9                     MS. QUINN: Yes, sir.

10                    SEN. FRASER: I really just have a  
11     couple of questions I wanted to clarify. I'm looking  
12     at the data that came back -- obviously, we had the  
13     discussion about the editorials, and then I had the  
14     Executive Summary of the report. But on the letters  
15     from the co-chair that is signed by both President  
16     Jimmy Carter and Secretary of State James Baker, right  
17     in the middle of the letter the statement, "We are  
18     recommending a photo ID system for voters designed to  
19     increase registration with a more affirmative and  
20     aggressive role for states in finding new voters and  
21     providing free IDs for those without driver's  
22     licenses."

23                    I believe I heard you say, and it  
24     appears that has been somewhat of a theme, is that,  
25     obviously, the totality of the entire report,

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1 everybody would like to get all of that put together.  
2 But as we do in legislation, we don't get everything  
3 we want. We take what we can get, put the small  
4 pieces together, put some of the bricks in place and  
5 hope we keep stacking them up. I'm assuming that was  
6 what you're saying, based on the fact that we're only  
7 addressing a photo ID bill today, that it was the goal  
8 of the commission?

9 MS. QUINN: Yes, sir. My understanding  
10 is that, as I've said, Texas has certain pieces of  
11 this already in place. This is another piece of it  
12 that Texas is trying to put in place.

13 SEN. FRASER: And I would add to that,  
14 in the Executive Summary, you know, they had multiple  
15 things, then a first, second and third. The second  
16 thing that is listed in the Executive Summary is to  
17 make sure that a person arriving at the polling site  
18 is the same one who is named on the list. And of the  
19 common things or the things that I continues to try to  
20 emphasize today, that's what this bill is all about.

21 My goal is that when someone walks in  
22 and represents them to be, you know, Tom Jones, I want  
23 them to make sure that is really Tom Jones and they  
24 have some way of verifying it. I believe, by reading  
25 what you're saying, that was the intent of the REAL ID

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1 and the fact that y'all are trying to -- based on what  
2 you say, you want to make sure that the person  
3 arriving at the polling site is the same one who is  
4 named on the list. Is that --

5 MS. QUINN: That's certainly one of  
6 those points. I think the other important point is  
7 that the perception that such kinds of things cannot  
8 occur is also important. And I have read before the  
9 quote from Page 18 of the report: "While the  
10 Commission is divided on the magnitude of other  
11 fraud . . . there is no doubt that it occurs. The  
12 problem, however, is not the magnitude of the fraud.  
13 In close or disputed elections, and there are many, a  
14 small amount of fraud could make the margin of  
15 difference. And . . . the perception of possible  
16 fraud contributes to low confidence in the system."

17 SEN. FRASER: In the research that the  
18 commission did during the time the commission was in  
19 place, did y'all get into the area of trying to look  
20 at and identify that there was in-person voter fraud  
21 either suspected or going on in the United States?

22 MS. QUINN: The report actually talks in  
23 an earlier provision on Page 4 about some of the fraud  
24 that they had found and talked about the Washington  
25 State and Wisconsin elections in 2004. And

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1 specifically says, "In Milwaukee, Wisconsin . . . more  
2 than 100 people who voted twice" -- excuse me. I'm  
3 taking this out of context.

4 In Milwaukee, Wisconsin, investigators  
5 said they found clear evidence of fraud, including  
6 more than . . . 100 people who voted twice, used fake  
7 names or false addresses, or voted in the name of a  
8 dead person."

9 SEN. FRASER: Now, these were in-person  
10 votes?

11 MS. QUINN: Well, as far as I can tell,  
12 that's the case. You know, this has been a few years,  
13 and I don't recall all the details behind the report  
14 they cited, and I had not brought that with me to  
15 check today. I would be more than happy to check it  
16 and get back to you.

17 SEN. FRASER: Thank you very much.  
18 Thank you for being here today.

19 MS. QUINN: It's my pleasure.

20 SEN. DUNCAN: Sen. Van de Putte.

21 SEN. VAN de PUTTE: Thank you,  
22 Mr. President.

23 Thank you very much for coming to appear  
24 today. And if you saw me going like this  
25 (indicating), it's because you have a really nice soft

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